

# CITY COUNCIL REPORT



Meeting Date: October 24, 2023  
 General Plan Element: Public Services & Facilities  
 General Plan Goal: Provide a safe environment for all citizens, visitors, and private interests

## ACTION

### Adopt Resolution No. 12968 authorizing:

Section 1. The City Council hereby authorizes and directs the Mayor to execute Contract No. 2023-167-COS with Intergraph Corporation for a one-year time extension from July 9, 2023 to July 8, 2024, for Maintenance Services to include Hardware and Software support services to the City as needed as set forth in Administrative Solicitation and Contract Number 20SS039.

## BACKGROUND

The Scottsdale Police Department (SPD) utilizes Computer Aided Dispatch (CAD) software to communicate and dispatch responding officers to calls for service. This mission critical software is vital to the operations of the 911 center. This technology also allows for an integrated in-vehicle technology (MPS) providing first responders with crucial information before arriving on a call for service.

Because of the criticality of the CAD system for public safety operations, SPD contracts with a vendor to provide services including:

- 24/7/365 support for technology infrastructure issue resolution for CAD, MPS, mapping, and related 911 systems.
- Ongoing cybersecurity protection software updates as needed.
- Ongoing software patches that provide updates, fixes, or feature improvements to the contracted software.

## ANALYSIS & ASSESSMENT

In July 2018, SPD entered into a 5-year master product and services agreement with Hexagon Safety & Infrastructure to provide software, maintenance services, and issue resolution services for CAD, MPS, mapping, and 911 systems. The original contract had a term of five years and was administratively approved/awarded by the Purchasing Director and expired July 9, 2023. The department is requesting a 12-month extension of the contract between the periods of July 9, 2023 to July 8, 2024, at which point the department will have completed the necessary procurement of software and services according to city procurement guidelines.

### Available Funding

There is available funding for the 12-month extension of this contract.

Action Taken \_\_\_\_\_

## City Council Report | SPD Contract Renewal for Intergraph Corporation, CAD Services

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Staffing & Workload Impact  
No staffing or workload impact.

### OPTIONS & STAFF RECOMMENDATION

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#### Recommended Approach

Adopt Resolution No. 12968 authorizing:

Section 1. The City Council hereby authorizes and directs the Mayor to execute Contract No. 2023-167-COS with Intergraph Corporation for a one-year time extension from July 9, 2023 to July 8, 2024, for Maintenance Services to include Hardware and Software support services to the City as needed as set forth in Administrative Solicitation and Contract Number 20SS039.

### RESPONSIBLE DEPARTMENT(S)

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Police Department.

### STAFF CONTACT(S)

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Jeff Walther, Chief of Police, [JWalther@scottsdaleaz.gov](mailto:JWalther@scottsdaleaz.gov)

### APPROVED BY

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Jeff Walther, Chief of Police

(480) 312-1900, [JWalther@scottsdaleaz.gov](mailto:JWalther@scottsdaleaz.gov)

10/9/23 18:37 MST

Date



Ana Lia Johnson, Interim Budget Director

(For financial policies compliance and budget authority)

(480)-312-7893, [anjohanson@Scottsdaleaz.gov](mailto:anjohanson@Scottsdaleaz.gov)

10/10/23 09:37 MST

Date



Jim Thompson, City Manager

(480)-312-2811, [JThompson@Scottsdaleaz.gov](mailto:JThompson@Scottsdaleaz.gov)

10/9/23 17:14 MST

Date

**ATTACHMENTS**

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1. Resolution No. 12968
2. Contract No. 2023-167-COS
3. Contract No. 20SS039

RESOLUTION NO. 12968

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA AUTHORIZING THE MAYOR TO EXECUTE A CITY SERVICES CONTRACT EXTENSION NO. 2023-167-COS WITH INTERGRAPH CORPORATION FOR AN ADDITIONAL ONE-YEAR OF A PREVIOUSLY ADMINISTRATIVELY EXECUTED FIVE YEAR CONTRACT

WHEREAS, the City Purchasing Department previously entered an administrative contract with Intergraph Corporation for Computer Aided Dispatch (CAD) software and software support services through Administrative Solicitation and Contract Number 20SS039; and

WHEREAS, Intergraph Corporation has provided quality services to the City; and

WHEREAS, the City desires to extend the Contract for Computer Aided Dispatch (CAD) software and software support services to the City as needed; and

WHEREAS, the approval of the City Council is necessary to extend the contract beyond the administrative five-year period; and

WHEREAS, Intergraph Corporation is qualified to perform the requested services desired by the City; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona as follows:

Section 1. The City Council hereby authorizes and directs the Mayor to execute Contract No. 2023-167-COS with Intergraph Corporation for a one-year time extension from July 9, 2023 to July 8, 2024 for Maintenance Services to include Hardware and Software support services to the City as needed as set forth in Administrative Solicitation and Contract Number 20SS039.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this the 24<sup>th</sup> day of October, of 2023.

ATTEST:

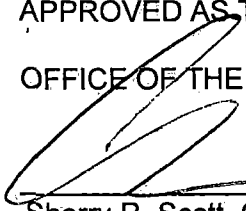
CITY OF SCOTTSDALE, an  
Arizona municipal corporation

\_\_\_\_\_  
Ben Lane, City Clerk

\_\_\_\_\_  
David D. Ortega, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney

By: Eric C. Anderson, Assistant City Attorney



**FIRST AMENDMENT TO THE MASTER PRODUCT AND SERVICES  
AGREEMENT BETWEEN THE CITY OF SCOTTSDALE, ARIZONA  
AND INTERGRAPH CORPORATION, THROUGH ITS HEXAGON  
SAFETY, INFRASTRUCTURE & GEOSPATIAL DIVISION**

THIS FIRST AMENDMENT to MASTER PRODUCT AND SERVICES AGREEMENT (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 between the City of Scottsdale ("City") and Intergraph Corporation through its Hexagon Safety, Infrastructure & Geospatial Division ("Hexagon"), dated July 11, 2018 (the "Master Agreement").

**RECITALS:**

- A. Hexagon and the City previously executed the Master Agreement with expiration date July 10, 2023;
- B. The parties desire to extend the term of the Master Agreement;

NOW THEREFORE, in consideration of the mutual promises hereof, and the mutual obligations in the Master Agreement as amended herein, the City and Hexagon agree to the following:

- 1. Section 5.1 is deleted and replaced with the following:

The Term of this Master Agreement shall begin on the Effective Date and remain in effect until July 10, 2024, or until the Master Agreement is earlier terminated pursuant to the terms set forth herein or by mutual agreement of the Parties. An Order that is executed prior to the expiration of the term of this Master Agreement shall be governed by this Master Agreement even if the Master Agreement Term expires during the performance of the Order.

- 2. The City and Hexagon each ratify and confirm the terms, conditions, obligations and undertakings set forth in the Master Agreement, and except as modified hereby, all other terms and conditions of the Master Agreement, including the specifically incorporated elements of the Contract, shall remain in full force and legal effect.

[The remainder of this page is left intentionally blank.]

In Witness Whereof, the Parties have entered into the Agreement as of the date stated herein:

EXECUTED as of the date first given above.

**INTERGRAPH CORPORATION**

By: \_\_\_\_\_  
Name Printed: Tiffany Taylor  
Title: Americas Finance Director

**ATTEST:**

**CITY OF SCOTTSDALE, AN ARIZONA  
MUNICIPAL CORPORATION**

\_\_\_\_\_  
Ben Lane, City Clerk

By: \_\_\_\_\_  
David D. Ortega, Mayor

**RECOMMENDED:**

\_\_\_\_\_  
Jeff Walther, Chief of Police

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney  
By: Eric C. Anderson, Senior Assistant City Attorney

Hexagon Contract 1806-028



## **MASTER PRODUCT AND SERVICES AGREEMENT**

This Master Product and Services Agreement (the "Master Agreement"), entered into on this 9<sup>th</sup> day of July 2018, is between the City of Scottsdale, a Municipal Corporation of the State of Arizona ("Customer"), and Intergraph Corporation doing business as Hexagon Safety & Infrastructure ("Hexagon") (each a "Party" and collectively the "Parties").

Hexagon will make available to Customer certain proprietary software, including related proprietary documentation, software maintenance services, and professional services, all of which will be provided to Customer pursuant to the terms of this Master Agreement and an Order. Before Hexagon will provide any Software licenses or perform any Services, Customer must execute a corresponding Order. The Parties desire to enter this Master Agreement to govern each Order.

The terms of Master Agreement consist of the following:

- The General Terms and Conditions
- Exhibit A – Services Terms and Conditions
- Exhibit B - End User License Agreement
- Exhibit C - Hexagon's U.S. Maintenance Terms and Conditions for Software
- Exhibit D - Sample Project Deliverable Sign-Off Form

### **GENERAL TERMS AND CONDITIONS**

#### **1 Definitions.**

- 1.1 "Affiliate" means, for business entities, the parent business entity of a Party and any business entities in which a Party or its parent company directly or indirectly holds a controlling ownership interest.
- 1.2 "Beta Software" means any version of Software prior to a generally available commercial release of such Software.
- 1.3 "Confidential Information" means any data or information, tangible or intangible, disclosed or made available by either party (the "Disclosing Party") to the other party (the "Receiving Party") in relation to this Master Agreement that is of value to the Disclosing Party and is not generally known in the industry or to competitors of the Disclosing Party and which shall include:
  - 1.3.1 tangible information marked by the Disclosing Party with the word "Confidential" or otherwise identified by an appropriate stamp or legend indicating its confidential nature;
  - 1.3.2 Confidential Information disclosed orally or visually and identified by the Disclosing Party as confidential when disclosed, and confirmed by the Disclosing Party in a

written notice within thirty (30) days following disclosure, which notice shall include markings similar to those outlined above; and

- 1.3.3 all other information that, notwithstanding the absence of markings or designations, would be understood by the parties, exercising reasonable business judgment, to be confidential.
- 1.3.4 technical, financial and business information and models, information relevant to the current or proposed business plans of the Disclosing Party, reports, market projections, analyses, working papers, comparisons, studies, or other documents which contain such information;
- 1.3.5 information disclosed either directly, in oral or tangible form (including, but not limited to, magnetic or electronic form), or indirectly, by permitting the Receiving Party or its employees to observe various operations or processes conducted by the Disclosing Party;
- 1.3.6 information of the Disclosing Party's Affiliates, employees or agents; and
- 1.3.7 any material or documents prepared by the Receiving Party that is based on or contains any information disclosed by the Disclosing Party.
- 1.3.8 Confidential Information does not include information that:
  - 1.3.8.1 is or becomes available in the public domain through no act of the Receiving Party;
  - 1.3.8.2 has been received on a non-confidential basis from a third party without breach of this Master Agreement, where the Receiving Party has no reason to believe that such third party is bound by any confidentiality obligation to the Disclosing Party;
  - 1.3.8.3 was already known by the Receiving Party without any obligation of confidence prior to receipt;
  - 1.3.8.4 was developed independently by the Receiving Party without reliance on the disclosed Confidential Information, provided that such independent development can be substantiated; or
  - 1.3.8.5 is confirmed by the Disclosing Party as not being confidential in writing.
- 1.6 "COTS" means commercial off the shelf Intellectual Property in the form generally released and distributed to Hexagon's customers and not including any functionality or features requiring source code changes.
- 1.7 "COTS Documentation" means commercial off the shelf documentation in the form generally released and distributed to Hexagon's customers and not including or requiring changes thereto.
- 1.8 "Customized Software" means those Services Deliverables that are software or computer code, whether in source code or object code.

- 1.9 "Deliverable(s)" means all Services Deliverables, software, hardware, and other items delivered or to be delivered by Hexagon to Customer and identified in the Order.
- 1.10 "Effective Date" means the date and time the last Party is given notice that the last Party has executed this Master Agreement.
- 1.11 "Fixed Price Project Assignment" means Hexagon will provide the Services and Software licenses for a fixed price.
- 1.12 "Hexagon IP" means Hexagon or Hexagon Affiliate developed, created, or prepared Intellectual Property.
- 1.13 "Installation Guide" means a computer file in a Microsoft Word or Adobe PDF document or a text file that contains information a User may need to install or operate a Software Product.
- 1.14 "Intellectual Property" means all forms of intellectual property including, but not limited to, patents, trademarks, copyrights, trade secrets, methodologies, logos, techniques, processes, know-how, formulae, algorithms, logic designs, screen displays, schematics, source and object code computer programs or software, documentation, mask work rights, design, ideas, product information, inventions and improvements thereto (whether or not patentable), and all works of authorship fixed in any medium of expression (including any form of online, digital, or electronic medium), whether or not copyrightable and whether registered or not.
- 1.15 "Maintenance Services" means only those services associated with the maintenance of the Software and other Deliverables licensed to Customer identified in the Order Documents for Maintenance Services.
- 1.16 "Order" means Order Documents that have been executed and/or accepted by both Parties documenting the purchase of any item or service and referencing the Master Agreement.
- 1.17 "Order Documents" shall mean written documents, the terms of which include Hexagon's commitment to provide products, licenses, and/or services at a specified price, subject to the terms and conditions of the Master Agreement. Order Documents may consist of a single document executed by the parties or a combination of documents that together form an Order.
- 1.18 "Purchase Order" or "PO" means a document issued by Customer to Hexagon to authorize the delivery of certain Services or Deliverables contemplated herein.
- 1.19 "Quote" means a document prepared by Hexagon reflecting prices for Services, Maintenance Services, and/or Deliverables.
- 1.20 "Services" means the work, services, projects, assignments, or tasks Hexagon shall perform pursuant to an Order. Services do not include Maintenance Services.
- 1.21 "Services Deliverable" means any data, document, information, Customized Software, Third Party Software, or material provided to Customer as a product of Hexagon's performance of Services pursuant to the Master Agreement.

- 1.22 "Software" means the software owned by Hexagon or an Affiliate and Third Party Software that is licensed to Customer.
- 1.23 "Software License Sale" means an Order that involves only the sale of Software licenses from Hexagon to Customer. This type of Order does not include Services.
- 1.24 "Software Product" means Hexagon IP delivered as proprietary object code or machine readable program identified in and to be provided by Hexagon to Customer pursuant to an Order placed under the terms of this Master Agreement. Software Product includes all of the following: (i) any associated Hexagon or Affiliate files, disk(s), CD-ROM(s) or other media with which the software is provided, (ii) any associated templates, data, printed materials, and "online" or electronic documentation, and (iii) any Updates or Upgrades of such Software Products provided pursuant to Maintenance Services). Software Product shall not mean any Third Party software, if any, that may be licensed to Customer under a separate license agreement.
- 1.25 "SOW" means a statement of work setting forth the scope of Services being provided pursuant to an Order.
- 1.26 "Subsystem" means a Software and hardware solution that is designed to provide a specific capability independent of the procurement of any other Subsystem. Hexagon's computer aided dispatch system ("CAD"), records management system ("RMS"), field based reporting ("FBR"), and mobile for public safety ("MPS") are each an example of a Subsystem.
- 1.27 "System" means a physical or operational location where the Software Product resides and operates on an individual server or where a single operational identification number ("Site ID") has been assigned by Hexagon.
- 1.28 "Term" means the duration of performance under this Master Agreement.
- 1.29 "Time and Materials Project Assignment" means Hexagon will perform the Services set forth in an Order on an hourly basis until the project is either completed or the authorized hours are exhausted, whichever comes first.
- 1.30 "Third Party Software" means computer software or other technology in which any person or entity, other than Hexagon or Hexagon's Affiliate, has any right, title or interest, including any restrictions or obligations (such as obligations to obtain consents or approvals and restrictions that may be eliminated only by obtaining such consents or approvals) applicable to the computer software or technology, but does not include software embedded in the Software Products by license from third parties. The use of Third Party Software is subject to all of the terms and conditions of the third party's software license or similar agreement ("SLA") provided with the Third Party Software.
- 1.31 "Update" means any modified version, fix, or patch of the Software Product provided by Hexagon.
- 1.32 "Upgrade" means each new release of the Software Product that is a result of an architectural, major, or minor change to the Software Product provided by Hexagon.

- 1.33 "User" means Customer or an individual employed by Customer. A User may also include Customer's contractor who requires temporary use of the Software Product to provide services on Customer's behalf.
- 2 Elements of an Order.
- 2.1 Order Composition.
- 2.1.1 Each Order will be comprised of Order Documents.
- 2.1.2 From time to time, Customer may request from Hexagon or Hexagon may provide Customer a draft Quote and/or SOW for Deliverables. Once the Parties mutually agree upon the contents of the Order Documents, as applicable, the Parties shall execute the Order Documents
- 2.1.3 Upon mutual execution or acceptance of the Order Documents, Customer will issue a PO or a notice to commence work, unless otherwise specified in the Order Documents. Except as set forth in the Order Documents, Hexagon shall not commence work on the Order until it receives from Customer a PO or notice to commence work.
- 2.1.4 Notwithstanding the forgoing, Orders for Maintenance Services shall commence on the date specified in the Order Documents regardless of whether Customer has issued a PO or notice to commence work.
- 2.2 Pricing. The following minimum elements shall be included with the Order Documents associated with the following types of Orders:
- 2.2.1 For a Software License Sale, a Quote identifying the Software licenses being procured and the total price for the Software License Sale.
- 2.2.2 For Time and Materials Project Assignments, a Quote setting forth the number of hours allocated for each grade of Hexagon resource to be utilized on the assignment and the hourly rate for each grade of Hexagon resource(s).
- 2.2.3 For Fixed Price Project Assignments, a Quote and SOW shall set forth the price of the work to be performed and the Deliverables provided for that Order.
- 2.2.4 For Orders for Maintenance Services, a Quote identify the Software to be maintained and the total price for the associated Maintenance Services.
- 2.3 Change Control. During the course of Hexagon's performance under the SOW, either Party may request a change in the scope of the SOW in writing, delivered to the other Party's project manager. Any changes in price, schedule, or other terms must be documented either by an amendment, change order, or a replacement of the SOW in question. No change, as contemplated in this paragraph, shall become effective until agreed to by both Parties in a mutually-executed writing.

2.4 Acceptance. Acceptance will occur based upon the following:

2.4.1 For Fixed Price Project Assignments, when the Deliverables in an SOW meets the acceptance criteria described in each task or milestones in the SOW. Once Hexagon believes a corresponding milestone or task has been successfully completed according to the provisions of the applicable SOW, Hexagon shall submit for execution by Customer's project manager a Project Deliverable Sign-off form in substantial conformity with Exhibit D. Within ten (10) calendar days of receipt of the applicable Project Deliverable Sign-off Form for the completed milestone, Customer's project manager will either: (i) execute the Project Deliverable Sign-off Form provided by Hexagon, or (ii) provide a written description of all deficiencies to Hexagon. If Customer fails to perform either action identified in the preceding sentence within ten (10) calendar days, or if the Deliverable, including the Software contained in the Fixed Price Project Assignment Order, is placed into production or utilized in a live environment, then the task or milestone shall be deemed accepted.

2.4.2 For Time and Materials Project Assignments and Maintenance Services, the Services are accepted as performed.

2.4.3 For a Software License Sale, once the Software has been shipped.

2.5 Advance Order for Maintenance Services. Upon execution of this Master Agreement by both parties, that certain Software Maintenance Agreement, City Contract #15SS033, commencing on July 1, 2015 ("2015 Maintenance Agreement") by and between the parties shall terminate and be immediately replaced with this Master Agreement. All services to be provided and payments due under the 2015 Maintenance Agreement shall be performed and paid, respectively, under this Master Agreement. Upon execution of this Master Agreement, the current Quote for which maintenance was being provided under the 2015 Maintenance Agreement any future Quotes for Maintenance Services shall be considered as an Order for Maintenance Services subject to this Master Agreement, including Exhibit C.

3 Composition of the Master Agreement.

3.1 Components. The agreement between the Parties consists of: (1) the Master Agreement (including the General Terms and Conditions and all Exhibits), (2) any amendments to the Master Agreement, and (3) Orders, together with any change orders, that may be delivered, prepared, or issued after the Effective Date.

3.2 Order of Precedence. In the event of any conflict or inconsistency among documents related to this Master Agreement, the following order of precedence shall be used to determine the resolution of the discrepancy, unless both parties mutually agree in writing to an alternative decision. The order of precedence for these documents shall be as follows:

- (1) Any amendments to this Master Agreement
- (2) The Master Agreement (excluding exhibits)
- (3) Exhibits to the Master Agreement; and



(4) Orders, as amended or modified by a change order;

#### 4 Invoicing and Payment.

##### 4.1 Invoices. Invoices shall be issued based upon the following:

4.1.1 For Software License Sales, Hexagon shall invoice Customer for the amount set forth in the Quote upon shipment of the Software identified in the Order Documents.

4.1.2 Orders for Fixed Price Project Assignments and Time and Materials Project Assignments shall be billed and invoiced in accordance with Exhibit A.

4.1.3 Orders for Maintenance Services shall be billed and invoiced in accordance with Exhibit C. Notwithstanding section 4.2 below, for Orders of Maintenance Services, all charges are due net 30 days from the date the Customer receives an invoice for Maintenance Services from Hexagon. Hexagon agrees to provide Maintenance Services during the period after receipt of an invoice but prior to receiving payment provided such period does not exceed thirty calendar days, and the Customer shall pay Hexagon for such Maintenance Services. Charges for products added during a Coverage Period shall be prorated to the remaining months of the Coverage Period, in whole month increments only, and such charges shall be due and payable in full upon receipt of invoice. In any and all cases, the City will have thirty (30) days to pay the amount set forth in the invoice.

4.2 Payment. Customer shall make payment for any invoices issued by Hexagon within thirty (30) calendar days of the date the invoice was issued.

4.3 Late Payment. RESERVED.

4.4 Taxes. All payments hereunder shall be in U.S. dollars (USD) and shall be net of any taxes, tariffs or other governmental charges. Contractor shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its income, employees, and operations. The City shall be responsible for the payment of sales taxes on delivered goods or software, if any.

4.5 Funds Appropriation. If the City Council does not appropriate funds to continue this Master Agreement and any Orders arising thereunder and pay for charges hereunder, the City may terminate this Agreement at the end of the then current fiscal year. The City agrees to give Hexagon written notice of termination at least thirty (30) days prior to the end of such fiscal year.

#### 5 Term and Termination.

5.1 Term. The Term of this Master Agreement shall begin on the Effective Date and remain in effect for a period of sixty (60) consecutive months or until the Master Agreement is earlier terminated pursuant to the terms set forth herein or by mutual agreement of the Parties. An Order that is executed prior to the expiration of the term of this Master Agreement shall be governed by this Master Agreement even if the Master Agreement Term expires during the performance of the Order.

- 5.2 Termination for Convenience. Except for Orders for Maintenance Services, the City may terminate this Master Agreement or an Order in its sole discretion at any time upon providing Hexagon with thirty (30) days written notice. Hexagon may terminate this Master Agreement or an Order for convenience with 90 days' written notice to the City. The coverage period applicable to Orders for Maintenance Services shall be governed by Exhibit C and shall survive termination of this Master Agreement if the Master Agreement is terminated for convenience. In the event of a termination pursuant to this paragraph, Customer agrees to pay Hexagon for the pro rata percentage of work performed based upon the schedule of payments set forth in the SOW, plus the cost of any labor, equipment, or materials ordered in good faith prior to notice of termination that could not be canceled. To the extent a Party exercises its right to terminate a specific Order, that termination shall have no effect upon the remaining Master Agreement, which, along with any other active Orders, shall remain in full force and effect. If a Party desires to terminate the Master Agreement, then the Parties shall proceed to wind down all ongoing work under the respective Orders in effect under this Master Agreement by the termination date. Each Party shall take commercially reasonable steps to bring the work to a close and to reduce its costs and expenditures.
- 5.3 Termination for Cause. Either Party may terminate this Master Agreement or a specific Order, as the case may be, in the event that other Party materially breaches a material term of this Master Agreement or any Order.
- 5.3.1 In the event a Party has materially breached an Order, the non-breaching Party may terminate the Order only after providing a thirty (30) calendar day cure period to cure such breach and the breach has not been cured, except for material breaches arising from non-payment. During the thirty (30) day cure period, the Parties shall try to determine a mutually agreeable plan to cure such breach. If such breach cannot be cured or an acceptable plan is not provided within the thirty (30) day cure period, the non-breaching Party may, but does not have the obligation to, terminate the Order. Notwithstanding anything to the contrary in this Master Agreement, in the event the Customer disputes in good faith an allegation of its default by Hexagon, Hexagon agrees it will not terminate or suspend the Order or limit any of its performance obligations or repossesses or render unusable its Software unless the Parties agree in writing or an order of a court of competent jurisdiction determines otherwise. If the good faith dispute is not resolved within sixty (60) days, then Hexagon shall be permitted to terminate or suspend the Order as otherwise provided herein.
- 5.3.2 In the event a Party has materially breached the Master Agreement or multiple Orders, the non-breaching Party may terminate the Master Agreement only after providing a sixty (60) calendar day cure period to cure such breach and the breach has not been cured except for material breaches arising from non-payment. During the sixty (60) day cure period, the Parties shall try to determine a mutually agreeable plan to cure such breach. If such breach cannot be cured or an acceptable plan is not provided within the sixty (60) day cure period, the non-breaching Party may, but does not have the obligation to, terminate the Master Agreement. If the Master Agreement is terminated pursuant to this paragraph, by the termination date, Hexagon will stop all work pursuant to any Orders arising under this Master Agreement. In the event the Master Agreement is terminated for cause, Hexagon shall be entitled to, and Customer agrees to pay Hexagon, payment for Deliverables and Services rendered on all ongoing Orders up to the

termination date, including, but not limited to, a pro rata percentage of work performed based upon the schedule of payments set forth in each SOW. Notwithstanding anything to the contrary in this Master Agreement, in the event the Customer disputes in good faith an allegation of its default by Hexagon, Hexagon agrees it will not terminate or suspend the Master Agreement or limit any of its performance obligations or repossesses or render unusable its Software unless the Parties agree in writing or an order of a court of competent jurisdiction determines otherwise. If the good faith dispute is not resolved within sixty (60) days, then Hexagon shall be permitted to terminate or suspend the Order as otherwise provided herein.

5.3.3 Notwithstanding the foregoing, Hexagon may suspend its performance or terminate any Order or the Master Agreement for cause if payment is not received within thirty (30) following the date when payment was due. In the event an Order is suspended or terminated for cause, Hexagon shall be entitled to, and Customer agrees to pay Hexagon, payment for Deliverables and Services rendered on said Order up to the suspension or termination date, including, but not limited to, a pro rata percentage of work performed based upon the schedule of payments set forth in each SOW. If Hexagon suspends an Order under this paragraph, then it may thereafter terminate the Order upon giving written notice to the Customer. Notwithstanding anything to the contrary in this Master Agreement, in the event the Customer disputes in good faith an allegation of its default by Hexagon, Hexagon agrees it will not suspend the Order or limit any of its performance obligations or repossesses or render unusable its Software unless the Parties agree in writing or an order of a court of competent jurisdiction determines otherwise. If the good faith dispute is not resolved within sixty (60) days, then Hexagon shall be permitted to terminate or suspend the Order as otherwise provided herein.

5.3.4 Notwithstanding the foregoing, Customer may not exercise a termination pursuant to the terms of Section 5.3 if Hexagon's material breach of the terms and conditions of the Master Agreement or any Order thereunder is caused or partially caused by Customer's negligence or failure to perform its obligations.

## 6 IP Ownership.

Customer acknowledges Hexagon will retain ownership and title of Intellectual Property made at any time while performing any Order. All Hexagon Software that is not an Update provided under this Master Agreement is licensed to Customer in accordance with Exhibit B (End User License Agreement) except as it is inconsistent with the terms set forth herein. Hexagon Software that are Updates to Hexagon Software previously licensed to the Customer under that certain Software License Agreement numbered 2004-043-COS (the "Implementation Agreement") shall be licensed pursuant to the provisions below. Notwithstanding the foregoing, from time to time, Updates will be developed that include third party components or new technology that will necessitate reasonable modification of the provisions set forth in this section. Before receiving the Updates to Hexagon Software that would necessitate any change to the below, which would be reflected in the applicable Order, the Customer shall have the opportunity to review and approve such modifications. Third Party Software is licensed to Customer pursuant to the software license agreement delivered with such Third Party Software product. From time to time, the Customer may seek to purchase licenses for which certain additional terms apply due to the nature of the product in addition to those licensing terms set forth in Exhibit B. In such an instance,

an addenda to Exhibit B will be provided to Customer as part of its Quote for the Software licenses, which shall apply in addition to the terms in Exhibit B, except that no term of the Addenda that conflicts with or is inconsistent with this Master Agreement shall have any force or effect.

6A Licensors hereby grants to Customer a perpetual, nonexclusive, non-transferable license to use the Update to Hexagon Software identified in Schedule A of the Implementation Agreement, as amended. For purposes of clarity, any references to Hexagon Software or Software Products within this Section 6A shall only mean Update to Hexagon Software included in Schedule A of the Implementation Agreement, as amended, despite the use of an otherwise pre-defined term.

6.1 With its license granted hereunder, the City may:

6.1.1 Transfer and/or transmit the Software from media into the local memory of the Customer's server in machine readable form.

6.1.2 Use the Software and Documentation only in accordance with Section 6 herein.

6.1.3 Use the Software in the quantities allowed for its type of use (i.e. Node Locked or Concurrent as described in Exhibit B of this Master Agreement).

6.2 Unless otherwise provided under this Master Agreement or as required by federal or State law, the Customer shall not:

6.2.1 Sublicense, sell, rent, lend, or lease the Software.

6.2.2 Disclose, distribute, or otherwise make the Software or portions thereof or use of the Software or Documentation or portions thereof available to any party other than Customer and its employees.

6.2.3 Modify the Software in any way without the prior written consent of Hexagon.

6.2.4 Use, copy, or otherwise transfer the Software and the Documentation, or any copy, modification, or merged portion there, in whole or in part except as expressly allowed under this Master Agreement.

6.2.5 Reverse engineer, decompile, disassemble, or analyze the data for purposes of determining structure of the program or otherwise violate the provisions of the Master Agreement.

6.3 Reproduction. The Software may not be copied or reprinted in whole or in substantial part, except however, the Customer may make additional copies of the Software for backup use. The Customer may copy Documentation, as needed, for its own internal use.

7 Warranties.

7.1 Software. The Software provided under the Orders is warranted to substantially conform to the user documentation, free from defects in its media for a period of thirty (30) days from initial installation. This warranty only applies to Software products that are not already covered by a Maintenance Agreement between Customer and Hexagon.

- 7.1.1 Hexagon also warrants it is the owner of Hexagon Software or otherwise has the right to grant to the Customer the rights set forth in the Orders.
- 7.1.2 Hexagon Software is free of known viruses, worms, and Trojan horses and code designed to disable the Hexagon Software because of the passage of time or alleged failure to make payments due. All work performed by Hexagon pursuant to this Master Agreement shall be in a professional and workmanlike manner consistent with the standard of care for public safety software developers.
- 7.2 Subsystem Warranty Coverage. For, and only for, new Subsystems procured/implemented pursuant to an Order under this Master Agreement, the warranty coverage shall be set forth in the applicable SOW, which shall be in addition to the warranty coverage set forth in Section 7.1.
- 7.3 Third-party Warranty Coverage. To the extent third-party products are supplied by Hexagon, those products are provided with a pass-thru-warranty from the original manufacturer, if any.
- 7.4 Disclaimer. Any product information Hexagon has shared with Customer during the proposal and/or contract activities to date was to provide an understanding of Hexagon's current expected direction, roadmap, or vision and is subject to change at any time at Hexagon's sole discretion. Hexagon specifically disclaims all representations and warranties regarding future features or functionality to be provided in any Software or Deliverable. Hexagon does not commit to develop the future features, functions, and/or products discussed in this material beyond that which is specifically committed to be provided by Hexagon pursuant to a valid Order. Customer should not factor any future features, functions, or products into its current decisions since there is no assurance that such future features, functions, or products will be developed. When and if future features, functions, or products are developed, they will be made generally available for licensing by Hexagon.
- 7.5 Warranty Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS ARTICLE 7, HEXAGON DISCLAIMS (TO THE FULLEST EXTENT PERMITTED BY LAW) ALL WARRANTIES ON PRODUCTS FURNISHED PURSUANT TO THIS MASTER AGREEMENT, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES SET FORTH IN THIS ARTICLE 7 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND, EXCEPT AS SET FORTH IN THE ARTICLE ENTITLED "INDEMNIFICATION PROVISIONS" BELOW, REPRESENTS THE FULL AND TOTAL WARRANTY OBLIGATION AND/OR LIABILITY OF HEXAGON.

## 8 LIMITATION OF LIABILITY

IN NO EVENT WILL HEXAGON BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, LOST PROFITS, LOSS OF USE OR PRODUCTION, LOSS OF REVENUE, LOSS OF DATA, EVEN IF HEXAGON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCE WILL HEXAGON'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT THAT HEXAGON HAS BEEN PAID BY CUSTOMER UNDER THE INDIVIDUAL ORDER UNDER WHICH THE EVENT GIVING RISE TO THE CAUSE OF ACTION HAS OCCURRED.

**9 Indemnification Provisions.**

- 9.1** Subject to the limitation of liability provisions in this Master Agreement, Hexagon will defend, at its expense, a third party action, suit, or proceeding against Customer ("Claim"), and indemnify and hold harmless Customer from any judgments, settlements, and reasonable attorney's fees arising out of any alleged negligent or other wrongful act or omission by Hexagon in connection with services provided under this Master Agreement and any Orders, including any allegation that a Software Product, Customized Software or Services Deliverable as of its delivery date under this Master Agreement infringes a valid United States patent, copyright or misappropriates a third party's trade secret ("Infringement Claim").
- 9.2** Hexagon's defense and indemnification obligations are conditioned upon:
- 9.2.1** Customer providing prompt written notice to Hexagon in writing of any Claim;
- 9.2.2** Hexagon having sole control of the defense of any actions and negotiations related to the defense or settlement of any Claim; and
- 9.2.3** Customer cooperating fully in the defense or settlement of any Claim.
- 9.3** Hexagon will have no obligation to defend Customer or to pay any resulting costs, damages, or attorneys' fees for any Infringement Claims alleging direct or contributory infringement of the Software Product (i) by the combination of or integration with a product, process, or system not supplied by Hexagon; (ii) by material alteration by anyone other than Hexagon or its subcontractors; (iii) by use after Customer has been notified of possible infringement; (iv) use after modifications are provided to Customer; (v) use after a return for refund as described below is ordered by Hexagon; (vi) the creation of which was pursuant to specifications provided by Customer; or (vii) use other than as specified in the documentation associated with the Software Product.
- 9.4** Without limiting the indemnification obligations in Section 9.1 and 9.2, in connection with any Infringement Claims, Hexagon, at its own expense and option, may either (i) obtain rights for Customer to continue using Software Product; (ii) replace the Software with a non-infringing alternative, or modify the allegedly infringing elements of Software Product, while maintaining substantially similar software functionality or data/informational content; or (iii) refund to Customer a prorated portion of the license fees paid by Customer for the infringing item(s), based on a five (5)-year, straight-line depreciation basis beginning from the initial date of delivery, in which case Customer will uninstall, cease all use of and return to Hexagon the infringing item(s).
- 9.5** In no event will the indemnification for Infringement Claims apply to any Beta Software or sample, hot fix, royalty-free, or evaluation software delivered pursuant to the Master Agreement.
- 9.6** Hexagon is not required to indemnify or defend Customer against Claims brought by any Customer affiliate.
- 9.7** This Article 9 provides the sole and exclusive remedies of Customer and Hexagon's entire liability in the event of a Claim. Customer has no right to recover and Hexagon has no

obligation to provide any other or further remedies, whether under another provision of the Master Agreement or any other legal theory or principle in connection with a Claim.

10 Insurance.

- 10.1 Without limiting any obligations or liabilities of Hexagon, Hexagon shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to the Customer of Scottsdale. Failure to maintain insurance as specified may result in termination of this Agreement at Customer's option.
- 10.2 No Representation of Coverage Adequacy: By requiring insurance herein, Customer does not represent that coverage and limits will be adequate to protect Hexagon.
- 10.3 Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or Services required to be performed under the terms of this Master Agreement are satisfactorily performed, completed and formally accepted by the Customer, unless specified otherwise in this Agreement.
- 10.4 Claims Made: In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or Services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.
- 10.5 Policy Deductibles and or Self-insured Retentions: The policies set forth in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to Customer of Scottsdale. Hexagon shall be solely responsible for any such deductible or self-insured retention amount.
- 10.6 Upon execution of this Agreement, the parties agree that Hexagon meets certain requirements (the "Self-Insurance Qualifications"), and deductibles and self-insured retention amounts shall not be limited. Hexagon shall meet the Self-Insurance Qualifications from time to time if and only if Hexagon has a net worth of \$500,000,000. If Hexagon does not meet Self-Insurance Qualifications, the parties will meet and agree upon reasonable limits to deductibles or self-insured retention amounts.
- 10.7 Use of Subcontractors: If any work under this Agreement is subcontracted in any way, Hexagon shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting Customer and Hexagon. Hexagon shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 10.8 Evidence of Insurance: Prior to commencing any work or Services under this Agreement, Hexagon shall furnish Customer with Certificate(s) of Insurance, issued by Hexagon's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein

and provide the required coverage, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, Customer shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above cited policies expire during the life of this Agreement, it shall be Hexagon's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions.

- 10.9 Certificates shall specifically cite the following provisions: Customer, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies:

Commercial General Liability  
Auto Liability  
Excess Liability - Follow Form to underlying insurance.

Hexagon's insurance shall be primary insurance as respects performance of subject contract.

All policies, except Technology Errors and Omissions insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or Services performed by Hexagon under this Contract.

#### 10.10 Required Coverage

- 10.10.1 Commercial General Liability: Consultant shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit.

The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- 10.10.2 Technology Errors and Omissions Liability: If the Agreement is the subject of any professional Services or work, or if Hexagon engages in any professional Services or work adjunct or residual to performing the work under this Agreement, Hexagon shall maintain Electronic Errors and Omissions Liability insurance covering errors and omissions arising out of the work or Services performed by Hexagon, or anyone employed by Hexagon, or anyone for whose acts, mistakes, errors and omissions Hexagon is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims.

- 10.10.3 Vehicle Liability: Hexagon shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on Hexagon's owned,



hired, and non-owned vehicles assigned to or used in the performance of the Hexagon's work or Services under this Agreement. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.

- 10.10.4 **Workers Compensation Insurance:** Hexagon shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Hexagon's employees engaged in the performance of work or Services under this Agreement and shall also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

## 11 Notices.

All notices given between the Parties shall be in writing and shall be considered properly sent by postage prepaid United States Mail or overnight carrier to the persons identified below, or such substitutes as may hereafter be disclosed by proper notification:

Michael Keran  
Police Technology Director  
Scottsdale Police Department  
8401 E Indian School Rd  
Scottsdale, Arizona 85251

Victor S. Vasile  
Divisional Counsel  
Intergraph Corporation d/b/a Hexagon  
Safety & Infrastructure

305 Intergraph Way  
Madison, Alabama 35758

Tel. No. (480) 312-5909  
Email: mkeran@scottsdaleaz.gov

Tel. No. (256) 730-1516  
Email: victor.vasile@hexagon.si.com

## 12 Force Majeure.

Neither party shall be deemed to be in default of any provision of this Master Agreement or an Order or be liable for any delay, failure in performance, or interruption of service resulting from acts of war, acts of terrorism, acts of God, acts of civil or military authority, labor disruption, civil disturbance, or any other cause beyond its reasonable control.

## 13 Place of Performance.

To the extent necessary, Customer agrees to provide appropriate work space and work place accommodations; computer equipment; software; access to relevant data, documents, plans, reports, and analyses; and necessary access to Hexagon personnel to perform work on an Order. To the extent work is performed remotely, Customer must provide VPN or secured remote connectivity (including a log-on and password) to all servers and workstations requiring installation/configuration by Hexagon.

#### **14 Amendments.**

Any and all amendments to this Master Agreement shall specifically reference the fact the amendment is intended to alter the terms and conditions set forth herein. No Order or change order to an SOW shall affect the terms and conditions set forth herein.

#### **15 Confidential Information.**

To the extent permitted by federal or State law:

- 15.1** Each party agrees that it shall not disclose to any third party any information concerning the customers, trade secrets, methods, process, or procedures or any other confidential business information of the other party which it learns during the course of its performance of this Master Agreement, without the prior written consent of such other party.
- 15.2** Customer agrees that any copies of the Software or Documentation which it makes pursuant to this Master Agreement shall bear all copyright, trademark, and other proprietary notices included therein by Hexagon and except as expressly authorized herein, Customer shall not disclose or distribute same to any third party without Hexagon's prior written consent.
- 15.3** Unless otherwise required by federal or Arizona law, the parties agree both during the term of this Master Agreement and for a period of seven (7) years after the termination of this Master Agreement, to hold each other's confidential information in confidence. The parties agree, unless required by federal or Arizona law or order of court, not to make each other's confidential information available in any form to any third party or to use each other's confidential information for any purposes other the execution of this Master Agreement. Each party agrees to take all reasonable steps to ensure that confidential information is not disclosed or distributed by the employees or agents in violation of the provisions of this Master Agreement.

#### **16 Assignment.**

Neither party shall assign, sublet, or transfer all or any portion of the Master Agreement, nor any interest in the Master Agreement, without the express written consent of the non-assigning party, which consent may be granted or withheld in the sole discretion of the non-assigning party. Notwithstanding the foregoing, Hexagon may assign its rights and obligations under the Master Agreement, request Customer's permission to: (1) an Affiliate or (2) another business entity in connection with a merger, consolidation, or reorganization of Hexagon or any of its subsidiaries, and Customer's permission shall not be unreasonably withheld.

#### **17 Export.**

Hexagon IP, including any technical data related to Software or Services, is subject to the export control laws and regulations of the United States. Diversion contrary to United States law is prohibited. Hexagon IP, including any technical data related to Software or Services, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:

- To Cuba, Iran, North Korea, Sudan, or Syria, or any national of these countries.

- To any person or entity listed on any United States government denial list, including, but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists, the United States Department of Treasury Specially Designated Nationals List, and the United States Department of State Debarred List ([http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp)).
- To any entity if Customer knows, or has reason to know, the end use is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses.
- To any entity if Customer knows, or has reason to know, that a reshipment contrary to United States law or regulation will take place.

**18 Miscellaneous.**

- 18.1 Authority.** Each Party represents and certifies to the other Party it has the requisite legal authority to enter into and be bound by this Master Agreement and all Orders arising from this Master Agreement.
- 18.2 Survival.** The rights and obligations in sections entitled "IP Ownership", "Limitation of Liability", "Dispute Resolution", "Confidential Information", "Export", and the terms of any license granted pursuant to this Master Agreement (including, but not limited to, Exhibit B), shall survive and continue after expiration or termination of the Master Agreement, shall remain in effect until fulfilled, and shall apply to any permitted successors and assigns. Upon termination of the Master Agreement, the provisions of the Master Agreement, including those in the preceding sentence, which by their express terms survive termination, shall remain in full force and effect.
- 18.3 Waiver.** The waiver by either Party of any of its rights or remedies in enforcing any action or breach under this Master Agreement in a particular instance shall not be considered as a waiver of the same or different rights, remedies, or actions for breach in subsequent instances.
- 18.4 Severability.** If any provision of this Master Agreement or an Order is void, voidable, unenforceable, or illegal in its terms, but would not be so if it were rewritten to eliminate such terms that were found to be voidable, unenforceable, or illegal and such rewrite would not affect the intent of the provision, then the provision must be rewritten to be enforceable and legal.
- 18.5 Counterparts.** This Master Agreement may be executed in multiple counterparts, each of which shall be deemed to be original, and all of which together shall constitute one and the same document. A signature delivered by facsimile or via an email containing a scanned, executed Master Agreement shall be deemed to be an original signature and shall be effective upon receipt thereof by the other party.
- 18.6 Headings.** Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Master Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms thereof.
- 18.7 Governing Law.** All legal or equitable disputes between the Parties which may arise from this Master Agreement, including all Orders, shall be subject only to the laws of the State

of Arizona. All disputes shall be brought either in the appropriate state court or the United States District Court for the District of Arizona in Maricopa County and the appellate courts to which appeals can be taken from those courts. All parties consent to the exercise by such courts of personal jurisdiction over them and each party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. The United Nations Conventions on Contracts for the International Sale of Goods shall not apply to this Master Agreement, and the Parties expressly agree not to be governed by the Uniform Computer Information Transactions Act or similar laws.

18.8 Independent Contractor. The Parties agree that Hexagon is an independent contractor, that nothing in this Master Agreement shall be construed as establishing or implying a relationship of master and servant between the Parties, or any joint venture or partnership between the Parties, and that nothing in this Master Agreement shall be deemed to constitute either of the Parties as the agent of the other Party or authorize either Party to incur any expenses on behalf of the other Party or to commit the other Party in any way whatsoever. Hexagon and its agents, employees, or subcontractors shall at no time be deemed to be agents, employees, or subcontractors of Customer, or be deemed to be under the control or supervision of Customer when carrying out the performance of its obligations in this Master Agreement. Without the prior written consent of Customer, Hexagon shall not carry on any activity that could be construed as being on behalf of Customer.

18.10 Captions. The captions used in this Master Agreement are solely for the convenience of the parties and do not constitute a part of this Master Agreement and are not to be used to construe or interpret this Master Agreement.

18.11 Immigration Law Compliance

Under the provisions of A.R.S. §41-4401, Hexagon warrants to the Customer that the Hexagon and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Hexagon and all its subcontractors now comply with the E-Verify Program under A.R.S. §23- 214(A).

A breach of this warranty by Hexagon or any of its subcontractors will be considered a material breach of this Agreement and may subject the Hexagon or Subcontractor to penalties up to and including termination of this Agreement or any subcontract. Hexagon will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The City may consider Hexagon's failure to assure compliance by all its subcontractors with the E-Verify Program a material breach of this Agreement.

The Customer retains the legal right to inspect the papers of any employee of Hexagon or any subcontractor who works on this Agreement to ensure that Hexagon or any subcontractor is complying with the warranty given above.

The Customer may conduct random verification of the employment records of the Hexagon and any of its subcontractors to ensure compliance with this warranty. The Hexagon agrees to indemnify, defend and hold the Customer harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

18.12 Background Check. Hexagon acknowledges that the City may require a background and/or criminal records check of Hexagon, which may include fingerprinting. If in the City's

sole discretion, the City determines that Hexagon refused to participate in a background and/or criminal records check or the City no longer wishes to contract with Hexagon due to the results of a background and/or criminal records check, the City may terminate this agreement immediately upon the City's notice to Hexagon.

19 Source Code Escrow. Subject to an additional fee for this service included within Order 2, Hexagon shall provide all Source Code and any updates or fixes for Hexagon's COTS application software that Customer has purchased from Hexagon for safekeeping with the Source Code escrow agent. Hexagon maintains existing escrow agreement with Iron Mountain which allow Hexagon to register Customer as a beneficiary under the Escrow Agreement. As beneficiary of the Escrow Agreement, Customer will have access to all Source Code of the products that they license for all versions of the software in the event that a triggering event (defined below) occurs. The software source deposited with the escrow agent will be a snapshot of the current version of the Source Code delivered by Hexagon in the form of a pure Source Code tree. Upon taking possession of the Source Code, Customer will have the right to use the Source Code for products that it owns in the versions currently installed on its system or any subsequent versions in the archive. Hexagon will make a deposit of the Source Code with the escrow agent once every six (6) months.

Customer shall have access to the Source Code only in the event Hexagon during Warranty Period, Extended Warranty Period or the maintenance period (1) files for bankruptcy protection under Chapter 7 of the Bankruptcy Code, (2) makes a general assignment for the benefit of creditors; (3) appoints a general receiver or trustee in bankruptcy of Hexagon's business or property; or (4) or takes any other action under any state or federal insolvency or similar law for the purpose of its bankruptcy or liquidation.

Upon Customer taking possession of the Source Code, Customer hereby agrees as follows:

- (1) Customer accepts full and total responsibility for the safekeeping of the Source Code. Customer agrees that such Source Code shall be subject to the restrictions of transfer, sale, and reproduction placed on the software itself as stated in the software license signed by all parties.
- (2) Customer agrees to only use Source Code related to applications for which they own a license. There will be Source Code from other applications in the archive.
- (3) No license under any trademark, patent, copyright, or any other intellectual property right, is either granted or implied by the disclosure of the Source Code to Customer. Hexagon's disclosure of the Source Code to Customer shall not constitute any representation, warranty, assurance, guarantee or inducement by the Hexagon to Customer of any kind, and, in particular, with respect to the non-infringement of trademarks, patents, copyrights, or any other intellectual property rights, or other rights of third persons or of Hexagon.
- (4) Upon Customer taking possession of the Source Code, Hexagon will not be responsible for maintaining the Source Code. Furthermore, Hexagon will not be

liable for any consequences related to the use of Source Code modified by Customer.

20 Cancellation for Conflict of Interest. This agreement is subject to cancellation for conflict of interest as required by A.R.S. § 38-511.

21 Hexagon certifies that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393.

22 Entire Agreement.

This Master Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof. This Master Agreement supersedes any and all prior discussions and/or representations, whether written or oral, and no reference to prior dealings may be used to in any way modify the expressed understandings of this Master Agreement. Any future representations, promises and verbal agreements related to the products, product features, future product enhancements, product functionality, or services covered by this Master Agreement will be of no force or effect unless reduced in writing and made a part of this Master Agreement. This Master Agreement may not be amended or modified unless so done in writing signed by authorized representatives of both Parties. The pre-printed terms and conditions of Customer's PO or any other terms and conditions of a Customer PO that may conflict in any way with the terms and conditions of this Master Agreement shall be void, even if issued subsequent to the effective date of this Master Agreement, and shall not be deemed to constitute a change to this Master Agreement.

EACH PARTY HEREBY WARRANTS AND REPRESENTS IT HAS FULL POWER AND AUTHORITY TO ENTER INTO AND PERFORM THIS AGREEMENT, AND THAT THE PERSON SIGNING ON BEHALF OF EACH HAS BEEN PROPERLY AUTHORIZED AND EMPOWERED TO ENTER INTO THIS AGREEMENT. EACH PARTY FURTHER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY IT.

SIGNATURE PAGE FOLLOWS

In consideration of the mutual obligations assumed under this Master Agreement, Customer and Hexagon agree to the terms and conditions set forth herein and attached to this Master Agreement as Exhibits and represent that this Master Agreement has been executed by each Party's duly authorized representative. The signatories represent that they have the authority to bind their respective organizations to this Master Agreement. This Master Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Master Agreement signed by each Party for all purposes.

**AGREED BY:**

By: 

Name MICHAEL KERAN

Title: POLICE TECHNOLOGY  
DIRECTOR

Date: 07-11-2018

INTERGRAPH CORPORATION

By: 

Name JENNIFER WILLIAMS

Title: DIRECTOR

Date: July 11, 2018

**CITY OF SCOTTSDALE REVIEW:**

By: 

Robert Schoepe

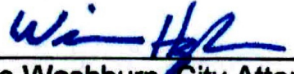
Purchasing Director **1555033**

By: 

Katherine Callaway

Risk Management Director

**APPROVED AS TO FORM:**

  
Bruce Washburn, City Attorney

By: William Hylan

Senior Assistant City Attorney

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# HEXAGON

SAFETY & INFRASTRUCTURE

## Exhibit A – Services Terms and Conditions

The additional terms and conditions set forth in this this Exhibit constitute the terms and conditions governing the delivery of Hexagon Services to Customer as described in individual Order Documents.

### 1 Scope of Services.

1.1 Hexagon will provide Services to Customer as stated on the Order Documents. Services as specified will be performed during a standard workweek, based on an eight (8) hour day.

1.2 For Fixed Price Project Assignments, the Services Deliverables will be stated in the Order Documents.

For Time and Materials Project Assignments, Services will be provided up to the maximum amount of time as stated in the Order Documents. Hexagon shall have no obligation to work beyond the number of hours authorized by Customer. Hexagon cannot commit to firm deliverables, guaranteed results, or a fixed schedule of performance on a time and material Services engagement. Hexagon will apply diligent effort to the stated purpose of the applicable SOW, however, should the Services require more time than estimated, Hexagon will obtain either a change order or new Order or SOW prior to performing additional Services. Except as otherwise stated in an Order, Time and Materials Project Assignment Orders will expire after a duration of six (6) months.

### 2 Invoicing for Services.

2.1 For time and materials Services, Hexagon will invoice Customer for all hours expended and onsite fees incurred on a monthly basis, or after all purchased hours have been expended, whichever occurs first. Customer agrees to pay an onsite fee of \$2,400.00 per trip for Hexagon resource. The onsite fee encompasses travel related expenses (plan, lodging, rental car, meals, and incidentals). A trip is defined as travel from his/her primary station and lasting no more than five (5) consecutive days. The parties acknowledge travel prices may increase over the course of the term of the Master Agreement, which may necessitate increasing the onsite fee identified herein. However, the change will only be made through a mutually executed writing reflecting the change.

2.2 For firm fixed price Services, Hexagon will invoice Customer upon acceptance of a Deliverable (as set out in Section 2.4 ("Acceptance") of the General Terms and Conditions) or in accordance with any billing milestones specified in the Order or SOW. Any necessary travel and travel-related expenses will be included in the firm fixed price.

### 3 Customer Obligations.

If any work needs to be performed at Customer's location, Customer agrees to provide, at its own expense, building access (including weekend and after-hours access), appropriate work space accommodations (including access to meeting room facilities), and the use of any machines, documentation, or software which Hexagon deems necessary to perform the Services. Additionally, Customer will review and provide timely feedback to Hexagon on all Deliverables and provide qualified technical personnel to support Hexagon as needed during performance of the Services. Customer is solely responsible for ensuring its systems, software, and data are adequately backed up. Hexagon will not be responsible for lost Customer data.



END OF EXHIBIT A



**HEXAGON**  
SAFETY & INFRASTRUCTURE

### **Exhibit B - END-USER LICENSE AGREEMENT**

The additional terms and conditions set forth in this End User License Agreement ("EULA") and the General Terms and Conditions shall govern the Software Products provided by Hexagon to Customer as described in Order Documents.

If Customer does not agree to the terms of this EULA, Customer is not authorized to, and Customer shall not, download, install, or use a Software Product.

#### **1 DEFINITIONS.**

1.1 "Core" means a physical processor on a computer server that can respond to and execute the basic instructions that drive the computer. A Central Processing Unit ("CPU") may have one or more Cores, and a given server may have multiple CPU sockets that may each contain multiple Cores.

1.2 "Desktop-based Software Product" means a self-contained application that runs from a local drive and does not require network connectivity to operate.

1.3 "Installation Guide" means a computer file in Microsoft® Word or Adobe® PDF format or a text file that contains information a User may need to install or operate a Software Product.

1.4 "Primary License" means the license(s) of the Software Product provided to Customer for general production use as authorized by this EULA.

1.5 "Supplementary License" means a license(s) of the Software Product which is made available by Hexagon for select Software Products to augment Primary Licenses for special purposes. Each Supplementary License requires a Primary License and the term of the Supplementary License shall not exceed the term of the applicable Primary License.

1.6 "Web-based Software Product" means a Webservices-based Software Product that is accessed by Users solely over the World Wide Web, Internet, or intranet.

1.7 "XML Files" means the XML (Extensible Markup Language) files generated by the Software Product, where applicable.

1.8 "XSL Stylesheets" means the XSL (Extensible Stylesheet Language) presentation of a class of XML Files which, when included with the Software Product, describe how an instance of the class is transformed into an XML (Extensible Markup Language) document that uses the formatting vocabulary.

#### **2 LICENSE GRANT.**

2.1 Provided Customer is not in breach of any term or condition of this EULA or the applicable Order for a Software Product, Hexagon hereby grants Customer a limited, non-exclusive license to install and use the Software Product, in object code form only, strictly for Customer's internal use and strictly in accordance with this EULA. The license is non-transferable, except as specifically set forth in this EULA. Customer assumes full responsibility for the selection of the Software Product to achieve Customer's intended results, and for the installation, use, and results obtained from the Software Product.

2.2 Minimum Requirements. The Software Product may require Customer's System to comply with specific minimum software, hardware, and/or Internet connection requirements.

Hexagon will append the applicable minimum requirements to Order Documents for Software License Sale under which a Software Product is purchased.

**2.3 License Type and Mode.** Software Products are licensed as either Primary Licenses or Supplementary Licenses. There are two (2) types of Primary Licenses and seven (7) types of Supplementary Licenses as described below. Depending on Customer's license, a license may be used in either Concurrent-Use mode or Node-Locked mode. The license type and mode for the Software Product Customer subscribed to or obtained will be designated (per the abbreviations set forth below) in the product description set forth on the proposal, quote, SOW, or packaging provided with the Software Product, and, if an electronic license manager tool is incorporated in the Software Product, verified by the Hexagon license system. If not otherwise indicated, Customer's license type and mode will be a Node-Locked Primary License. Each license of the Software Product is subject to the terms of this EULA.

**2.3.1 Primary Licenses are described below:**

(a) Concurrent-use mode (CC) allows for the checking in and checking out of the total available licenses of the Software Product for Users. At any point, Customer may run as many copies of the Software Product as Customer have licenses. If the Software Product is enabled to be run in a disconnected mode, as set forth in the Installation Guide, a User may check out a license from the System for mobile or home use, thus reducing the total number of licenses available in the license pool until the license is checked back in to the System. If the Software Product is not enabled to be run in a disconnected mode, the mobile or home computer will require a Node-Locked License. If the anticipated number of Users of the Software Product will exceed the number of applicable licenses, and in the absence of a license manager tool incorporated in the Software Product, Customer must use a reasonable mechanism or process to assure that the number of persons using the Software Product concurrently does not exceed the number of licenses. Customer consents to the use of a license mechanism, license files, hardware keys, and other security devices in connection with the Software Product and agree not to attempt to circumvent, reverse engineer, or duplicate such devices.

(b) Node-Locked mode (NL) allows a single copy of the Software Product to be stored on hard disk and loaded for execution on a single designated workstation, or, for software designed for use on a handheld device, for execution on a single designated handheld device.

**2.3.2 Supplementary Licenses are described below:**

(a) Backup License (BCK) is licensed solely for "cold standby" when manual switchover of the Software Product to the Supplementary License is required in the event of failure of the Primary License.

(b) Developer's License (DEV) is a license of a Web-based Software Product that is delivered solely in connection with the Primary License of such Software Product for the purposes of developing and testing Customer's website built only with the Software Product. Developer's Licenses shall not be used for production purposes (i.e. a fully deployed website).

(c) Load Balancing License (LOB) is a license of a Web-based Software Product solely for use as a second or successive license on a web cluster to balance the load with the Primary License on multiple servers represented by one (1) IP address.

(d) Redundant License (RDT) is licensed solely for "hot standby" when automatic switchover of the Software Product to the Supplementary License is required in the event of failure of the Primary License.

(e) Test License (TST) is licensed solely for testing purposes. However, Hexagon also allows a Test License to be used to conduct no-cost training on test servers for a maximum of thirty (30) days per year.

(f) Training License (TRN) is licensed solely for training purposes.

(g) Secondary License (SEC or TFB) is licensed for non-productive use for training, development, testing, failover, backup, etc. Number of Secondary Licenses cannot exceed the number of purchased Primary Licenses.

**2.4 Updates and Upgrades.** If the Software Product is an Update or Upgrade to a previous version of the Software Product, Customer must possess a valid license to such previous version in order to use the Update or Upgrade. The Software Product and any previous version may not be used by or transferred to a third party. All Updates and Upgrades are provided to Customer on a license exchange basis. Updates are subject to all of the terms and conditions of the EULA applicable to the Software Product. By using an Update or Upgrade, Customer (i) agrees to voluntarily terminate Customer's right to use any previous version of the Software Product, except to the extent that the previous version is required to transition to the Update or Upgrade; and (ii) acknowledges and agrees that any obligation that Hexagon may have to support the previous version(s) of the Software Product will end upon availability of the Update. If an Update is provided, Customer will take prompt action to install such Update as directed by Hexagon. If Customer fails to do so, Customer acknowledges the Software Product may not work correctly or Customer will not be able to take advantage of all of the Software Product's available features. In any event, Hexagon will not be liable for additional costs Customer incurs as a result of Customer's installation or failure to install an Update. The EULA delivered with the Upgrade may supersede any EULA or signed license agreement associated with prior releases of the Software Product. Customer and Hexagon acknowledge: that allowing an Upgrade to be licensed on the same terms as a prior release may create unintended consequences, such as, without limitation, a failure to bind a user to terms necessitated by new functions or content of the Upgrade; and, that mandating an Upgrade be licensed on terms delivered with the Upgrade may create unintended consequences, such as, without limitation, a heightened risk that new terms may apply to the user without the user's normal diligent scrutiny thereof. It is the expectation of the Parties to formally and expressly agree upon license terms to be applied to an Upgrade; provided that in the absence of express license terms evidenced in writing, an Upgrade shall be licensed on the same terms of the prior release, but subject to such superseding terms of the EULA delivered with the Upgrade as a commercially reasonable software vendor would require in order to accommodate any attributes of the Upgrade which differentiate it from the prior release.

**3 RIGHTS AND LIMITATIONS.** Please see specific exceptions and additional terms related to GeoMedia Viewer Software, Beta Software, Evaluation Software, and Educational Software set forth at the Addendum to this EULA.

**3.1 THE FOLLOWING ARE PERMITTED FOR YOUR LICENSE:**

**3.1.1** Customer may make one copy of the Software Product media in machine readable or printed form and solely for backup purposes. Hexagon retains ownership of all User created copies. Customer may not transfer the rights to a backup copy unless Customer transfers all rights in the Software Product and license as provided for in Section 3.1.2. Any other copying of the Software Product, any use of copies in excess of the number of copies Customer have been authorized to use and have paid for, and any distribution of

the Software Product not expressly permitted by this EULA, is a violation of this EULA and of federal or applicable governing law.

3.1.2 Customer may transfer the Software Product and license within Customer's company (intra-company transfer), subject to the Hexagon Software Transfer Policy ("Software Transfer Policy") and the terms of this EULA. The Software Transfer Policy is available from Hexagon upon request. If Customer transfers the Software Product, Customer must at the same time either transfer all copies, modifications, or merged portions, in whatever form, to the same party, or Customer must destroy those not transferred.

3.1.3 For a Web-based Software Product:

(a) Customer may run multiple Websites and provide multiple Webservices to Customer's client users with a single license.

(b) Customer may distribute client side web page plug-ins (e.g., ActiveX controls, Java applets and applications, Enhanced Compressed Wavelet (ECW) plug INS) to Users.

(c) Customer may load this Web-based Software Product on multiple machines within a cluster that is acting as a single web server, provided Customer has obtained the applicable number of Load Balancing Licenses or number of Cores from Hexagon and the total number of map servers or number of Cores deployed do not exceed the quantity licensed.

(d) Customer may only copy and distribute the Java script source files to support the Web-based Software Product's output vector map type and Customer's associated websites, and Customer may prepare derivative works solely for Customer's internal use.

3.1.4 Unless otherwise stated in the Installation Guide, for Software Products which contain XSL Stylesheets for presenting XML Files, Customer may only use the XSL Stylesheets and derivative works thereof for the purpose of presenting XML Files and derivative works thereof (collectively, "XML Products") for Customer's enterprise. Customer may not distribute the XSL Stylesheets or XML Products on a stand-alone basis. XSL Stylesheets may not be used in the production of libelous, defamatory, fraudulent, lewd, obscene or pornographic material, or any material that infringes upon any third party intellectual property rights, or otherwise in any illegal manner. All XSL Stylesheets supplied with the Software Product are and will remain the property of Hexagon.

3.1.5 Unless otherwise stated in the Installation Guide, for Software Products that are delivered with an Application Programming Interface ("API") and/or configuration set-up, Customer may use the API(s) to write Customer's own extensions to the Software Products, and Customer may use configuration setup to configure the Software Product, but only to the extent permitted by the API(s) and/or configuration setup. Insofar as Hexagon does not transfer to Customer any rights in its Intellectual Property by allowing Customer to write Customer's own extensions using the API(s) or to configure the software via the configuration set-up, Customer hereby agrees and acknowledges that Hexagon retains all rights in its Software Product, API(s), and configurations. Except where otherwise provided for in writing, Hexagon does not make any representations or warranties with respect to such extensions and/or configurations and to the maximum extent permitted by applicable law, Hexagon and its suppliers disclaim all warranties, either express or implied, relating to such extensions and/or configurations, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, high risk use and non-infringement. Subject to the forgoing, Customer's use of such extensions and/or configurations is solely at Customer's own risk, and Customer hereby agrees to

indemnify and hold harmless Hexagon and its suppliers with respect to such extensions and/or configurations.

3.1.6 Customer is responsible, and bears the sole risk, for backing up all systems, software, applications, and data, as well as properly using the Software Product.

3.1.7 At all times, Customer must keep, reproduce and include all copyright, patent, trademark and attribution notices on any copy, modification or portion of the Software Product, including, without limitation, when installed, used, checked out, checked in and/or merged into another program.

### 3.2 THE FOLLOWING ARE PROHIBITED FOR YOUR LICENSE:

3.2.1 Customer may not sell, rent, license, lease, lend, or otherwise transfer the Software Product, or any copy or modification, to another company or entity or person. Any such unauthorized transfer will result in automatic and immediate termination of the license.

3.2.2 Customer may not, and Customer may not authorize anyone else to, decompile, disassemble, or otherwise reverse engineer the Software Product.

3.2.3 Customer may not, and Customer may not authorize anyone else to, work around any technical limitations in the Software Product.

3.2.4 Customer may not, and Customer may not authorize anyone else to, publish the Software Product for others to copy or use.

3.2.5 Customer may not, and Customer may not authorize anyone else to, use, copy, modify, distribute, disclose, license or transfer the Software Product, or any copy, modification, or merged portion, in whole or in part, except as expressly provided for in this EULA.

3.2.6 Customer may not, and Customer may not authorize anyone else to, re-use the component parts of the Software Product with a software product other than the Software Product Customer is licensed to use. Customer may not, and Customer may not authorize anyone else to, re-use the component parts of the Software Product on different computers, servers, or devices. The Software Product is licensed as a single product.

3.2.7 Customer may not, and Customer may not authorize anyone else to, circumvent any license mechanism in the Software Product or the licensing policy.

3.2.8 Customer may not, and Customer may not authorize or allow anyone else to, use or view the Software Product for any purposes competitive with those of Hexagon.

3.2.9 Customer may not, and Customer may not authorize anyone else to, use the Software Product except as expressly set forth in this EULA.

3.2.10 For a Desktop-based Software Product that is Node-Locked:

(a) Customer may not run the Software Product for Web-based applications.

(b) Customer may not allow the Software Product to be used by multiple Users on a single workstation at the same time.

3.2.11 Customer may not, and Customer may not authorize or allow anyone else to, use the Developer's License for production purposes (i.e., a fully-deployed website).

3.2.12 Customer may not, and Customer may not authorize or allow anyone else to, publish to a third party any results of benchmark tests run on the Software Product. The sample and demo data set(s) and related script(s) delivered with some Software Products



(the "Sample Data") are provided solely for the purpose of instructing the User on how to use the Software Product with which the Sample Data are delivered. The Sample Data are licensed in conjunction with the Software Product and are not to be redistributed, licensed, sold, transferred, used, or otherwise dealt with in a production solution without Hexagon's prior written consent.

3.2.13 The Software Product is not one hundred percent (100%) fault-tolerant. The Software Product is not designed or intended for use in any situation where failure or fault of any kind of the Software Product could lead to death or serious bodily injury of any person, or to severe physical, property, or environmental damage ("High Risk Use"). Customer is not licensed to use the Software Product in, or in conjunction with, any High Risk Use. High Risk Use of any Software is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: operation of aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices. Customer hereby agrees not to use the Software Product in, or in connection with, any High Risk Use. High Risk Use shall not mean any use of the Software Product for purposes it is regularly marketed and sold (e.g., computer aided dispatch software may be used to dispatch emergency services).

3.2.14 For a Web-based Software Product:

- (a) Customer may not use the Web-based Software Product to operate software as a service or hosting without the prior written consent of Hexagon.
- (b) Customer may not use a Load Balancing License (LOB) of the Web-based Software Product detached of its Primary License.
- (c) Customer may not use Primary Licenses (and their allocated Load Balancing Licenses) ordered or delivered under a single part number (e.g. "product name – WORKGROUP") for other entities or organizations or at a different physical geographic address.

#### 4 TERM.

This EULA is effective until terminated or until Customer's software subscription or lease expires without being renewed. This EULA may be terminated (a) by Customer, by returning to Hexagon the original Software Product or by permanently destroying the Software Product, together with all copies, modifications and merged portions in any form; (b) by Hexagon, upon Customer's breach of any of the terms hereof or Customer's failure to pay the appropriate license or subscription fee(s); (c) upon Customer's installation of an Upgrade that is subject to a new applicable license agreement covering the Software Product Upgrade; or (d) by expiration of the applicable license files, if this is a temporary license. Customer agree upon the earlier of the termination of this EULA or expiration of Customer's software subscription to cease using and to permanently destroy the Software Product (and any copies or modifications of the Software Product in any form, and all of the component parts of the Software Product) and certify such destruction in writing to Hexagon.

#### 5 AUDIT.

Hexagon shall have the right, during Customer's normal business hours, to audit Customer's use of the Software Product and Customer's compliance with the provisions of this EULA. Hexagon will provide Customer with thirty (30) days prior written notice of an audit. The right of audit shall be limited to twice per calendar year. Prior to the start of an audit, Hexagon's personnel will sign a reasonable non-disclosure agreement provided by Customer. During the audit, Customer shall allow Hexagon's personnel to be provided reasonable access to both Customer's records and

personnel. The cost of the audit shall be paid by Hexagon unless the results of the audit indicate that Customer has underpaid fees to Hexagon, in which case, Customer agrees to promptly pay Hexagon such fees at the price previously agreed to for the Software Product license or software subscription plus interest on such underpayments from the original due date at the lesser of two percent (2%) per month or the highest rate allowed by applicable law, and Customer further agrees to bear all costs associated with the audit.

In addition to the foregoing provisions related to general auditing, Hexagon shall have a right to obtain certain documentation from you, as follows. If the SOFTWARE PRODUCT includes logging mechanisms intended to track usage volume or quantity, you shall not intentionally interfere with such mechanisms, and you shall transmit log files associated therewith to Hexagon upon Hexagon's demand and in accordance with Hexagon's reasonable transmission instructions. Hexagon shall not demand the transmission of usage tracking log files more frequently than four (4) times in any calendar year. If log files establish an underpayment of fees to Hexagon, such underpayment will be addressed on the same basis as an underpayment discovered as a result of a general audit.

## **6 INTELLECTUAL PROPERTY.**

**6.1 Ownership of Software.** ALL SOFTWARE PRODUCTS ARE PROPRIETARY PRODUCTS OF HEXAGON AND THIRD PARTIES WHERE SUCH THIRD PARTIES ARE IDENTIFIED BY HEXAGON, AND ARE PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL TREATIES. TITLE TO SOFTWARE PRODUCTS AND ALL COPIES, MODIFICATIONS AND MERGED PORTIONS OF A SOFTWARE PRODUCT SHALL AT ALL TIMES REMAIN WITH HEXAGON AND SUCH THIRD PARTIES. Software Products are licensed pursuant to this EULA, not sold. Hexagon and additional third parties retain all right, title and interest in and to all Software Products, including, but not limited to, all Intellectual Property rights in and to each Software Product. All rights not expressly granted to Customer by this EULA or other applicable Third Party Software license agreement or terms and conditions are reserved by Hexagon and such third parties. No source code is deliverable hereunder unless otherwise expressly agreed to in writing by Hexagon. A list of registered patents associated with the Software Products, is available at [www.intergraph.com/patents](http://www.intergraph.com/patents).

**6.2 Ownership of Intellectual Property.** Customer acknowledges and agrees that Hexagon and third party manufacturers, as applicable, own all rights in and to Hexagon's and the applicable third party manufacturer's trade names, and no right or license is granted to Customer pursuant to this EULA to use such trade names. Customer also acknowledges and agrees that Hexagon and third party manufacturers, as applicable, own all right, title and interest in and to all Intellectual Property relating to and for the Software Product. If Customer brings a patent claim against Hexagon or any third party manufacturer over patents Customer claim are being infringed by the Software Product, Customer's patent license from Hexagon and any applicable third party manufacturer(s) for the Software Product automatically ends.

## **7 RESTRICTIONS.**

**7.1 United States Government Restricted Rights.** If the Software Product (including any Updates, Upgrades, documentation or technical data related to such Software Product) is licensed, purchased, subscribed to or obtained, directly or indirectly, by or on behalf of a unit or agency of the United States Government, then this Article 7 also applies.

**7.1.1 For civilian agencies:** The Software Product was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with the



Federal Acquisition Regulations ("FAR") 52.227-19 (a) through (d) (Commercial Computer Software – Restricted Rights).

7.1.2 For units of the Department of Defense: The Software Product was developed at private expense and is "commercial computer software" submitted with restricted rights in accordance with the Defense Federal Acquisition Regulations ("DFARS") DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation).

7.1.3 Notice: This Software Product is "Commercial Computer Software" as defined in DFARS 252.227-7014 (Rights in Noncommercial Computer Software) and FAR 12.212 (Computer Software), which includes "technical data" as defined in DFARS 252.227-7015 (Technical Data) and FAR 12.211 (Technical Data). All use, modification, reproduction, release, performance, display or disclosure of this "Commercial Computer Software" shall be in strict accordance with the manufacturer's standard commercial license, which is attached to and incorporated into the governing Government contract. Hexagon and any applicable Third Party Software manufacturer(s) are the manufacturer. This Software Product is unpublished and all rights are reserved under the copyright laws of the United States.

7.1.4 Government Reserved Rights: MrSID technology incorporated in the Software Product was developed in part through a project at the Los Alamos National Laboratory, funded by the U.S. Government, managed under contract by the University of California (the "University"), and is under exclusive commercial license to LizardTech, Inc. It is used under license from LizardTech. MrSID technology is protected by U.S. Patent No. 5,710,835. Foreign patents pending. The U.S. Government and the University have reserved rights in MrSID technology, including without limitation: (a) The U.S. Government has a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced throughout the world, for or on behalf of the United States, inventions covered by U.S. Patent No. 5,710,835 and has other rights under 35 U.S.C. § 200-212 and applicable implementing regulations; (b) If LizardTech's rights in the MrSID technology terminate during the term of this EULA, Customer may continue to use the Software Product. Any provisions of this license which could reasonably be deemed to do so would then protect the University and/or the U.S. Government; and (c) The University has no obligation to furnish any know-how, technical assistance, or technical data to users of MrSID technology and makes no warranty or representation as to the validity of U.S. Patent 5,710,835 nor that the MrSID technology will not infringe any patent or other proprietary right. For further information about these provisions, contact LizardTech, 1008 Western Ave., Suite 200, Seattle, WA 98104.

7.2 Export Restrictions. Software Products, including any technical data related to Software Products, are subject to the export control laws and regulations of the United States, including, but not limited to the U.S. Export Administrations Act. Diversion contrary to United States law is prohibited. This Software Product, including any technical data related to this Software Product and any derivatives of this Software Product, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:

- To Cuba, Iran, North Korea, Sudan, or Syria, or any national of these countries.
- To any person or entity listed on any United States government denial list, including, but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists ([www.bis.doc.gov/complianceand enforcement/liststocheck.htm](http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm)), the United States Department of Treasury Specially Designated Nationals List

([www.treas.gov/offices/enforcement/ofac/](http://www.treas.gov/offices/enforcement/ofac/)), and the United States Department of State Debarred List (<http://www.pmddtc.state.gov/compliance/debar.html>).

- To any entity if Customer knows, or have reason to know, the end use is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses.
- To any entity if Customer knows, or have reason to know, that an illegal reshipment will take place.

If the Software Product Customer received is identified on the media as being ITAR-controlled, this Software Product has been determined to be a defense article subject to the U.S. International Traffic in Arms Regulations ("ITAR"). Export of this Software Product from the United States must be covered by a license issued by the Directorate of Defense Trade Controls ("DDTC") of the U.S. Department of State or by an ITAR license exemption. This Software Product may not be resold, diverted, or transferred to any country or any end user, or used in any country or by any end user other than as authorized by the existing license or ITAR exemption. Subject to the terms of this EULA, this Software Product may be used in other countries or by other end users if prior written approval of DDTC is obtained.

Any questions regarding export or re-export of the Software Product or concerning ITAR restrictions, if applicable, should be addressed to Hexagon's Export Compliance Department at 305 Intergraph Way, Madison, Alabama, United States 35758 or at [exportcompliance@intergraph.com](mailto:exportcompliance@intergraph.com).

**7.3 Territorial Use Restriction.** Unless otherwise specifically permitted in writing by Hexagon, use of the Software Product outside the country in which it is licensed is strictly prohibited.

**7.4 Use Outside the United States.** If Customer is located outside the United States, then the provisions of this section shall also apply: (i) Les parties en présence confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s'y rattachent, soient rédigés en langue anglaise (Translation: "The parties confirm that this agreement and all related documentation is and will be in the English language."); and (ii) Customer is responsible for complying with any local laws in Customer's jurisdiction which might impact Customer's right to import, export or use the Software Product, and Customer represents that Customer has complied with any and all regulations or registration procedures required by applicable law to make this EULA fully enforceable.

**7.5 Survival.** The provisions of this EULA which require or contemplate performance after the expiration or termination of this EULA shall be enforceable notwithstanding said expiration or termination.

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**HEXAGON**  
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**HEXAGON END-USER LICENSE AGREEMENT  
ADDENDUM FOR CERTAIN PRODUCTS**

This Addendum is applicable to Customer in the event that the Software Product is one that also makes use of the products identified below. If applicable, this Addendum ("Addendum") sets forth the terms of the Customer's use of the Software Product in addition to the terms of the END-USER LICENSE AGREEMENT ("EULA") provided to the Customer at the time of purchase. This Addendum shall only apply to Customer if Customer use any of the products identified below. To the extent not inconsistent with this Addendum, all terms of the EULA shall apply to the use of the Software Product. In the event of a conflict of terms between the EULA and this Addendum, this Addendum shall take precedence over the EULA.

**1 Remote Content Management.** This Article only applies if the Software Product is Remote Content Management and makes use of DotNetZip Library.

**1.1 "Contributor"** shall mean any person that distributes its contribution under this license.

**1.2** If Customer brings a patent claim against any contributor over patents that Customer claims are infringed by the software, Customer's patent license from such contributor to the software ends automatically.

**2 GeoMedia Viewer Software – Additional Terms.** The software license specifically for GeoMedia Viewer permits copies to be stored on hard disk and loaded for execution on one or more workstations. The GeoMedia Viewer software may be freely copied, transferred, and loaned both inside and outside Customer's company.

**3 Beta Software - Additional Terms.** If the Software Product Customer received with this EULA is Beta Software, then the following additional terms apply. To the extent that any provision in this Article is in conflict with any other terms or conditions in this EULA, this Article shall supersede such other terms and conditions with respect to the Beta Software, but only to the extent necessary to resolve the conflict. Subject to applicable federal and Arizona law, Customer shall hold all information concerning Beta Software and Customer's use and evaluation of such information and the Beta Software (collectively, "Beta Software Information") in confidence and with the same degree of care Customer uses to keep Customer's own similar information confidential, but in no event shall Customer use less than a reasonable degree of care; and Customer shall not, without the prior written consent of Hexagon, disclose such Beta Software Information to any person or entity for any reason at any time; provided, however, it is understood that Customer may disclose any Beta Software Information to those of Customer's representatives who actually need such information for the purpose of participating in the proposed evaluation and testing ("Beta Testing") of the Beta Software, on the condition that, prior to such disclosure, such representative has been made aware of the terms of this EULA. Customer shall not use any Beta Software Information for any reason or purpose other than as necessary for Beta Testing. Customer agrees to make no other use of the Beta Software Information or to incorporate any Beta Software Information into any work or product. Customer acknowledges that the Beta Software is a pre-release, beta version, does not represent final product from Hexagon, and may contain bugs, errors and other problems that could cause system or other failures and data loss. THE BETA SOFTWARE IS PROVIDED TO YOU "AS-IS", AND

HEXAGON DISCLAIMS ALL WARRANTY AND LIABILITY OBLIGATIONS TO YOU OF ANY KIND. Customer may use the Beta Software only for evaluation and testing. Production use of Beta Software is strictly prohibited. Customer acknowledges that Hexagon has not promised or guaranteed to Customer that Beta Software or any portion thereof will be announced or made available to anyone in the future, Hexagon has no express or implied obligation to Customer to announce or introduce the Beta Software and that Hexagon may not introduce a product similar to or compatible with the Beta Software. Accordingly, Customer acknowledges that any research or development that Customer performs regarding the Beta Software or any product associated with the Beta Software is done entirely at Customer's own risk. During the term of this EULA, if requested by Hexagon, Customer will provide feedback to Hexagon regarding Beta Testing, including error or bug reports. Upon receipt of a later unreleased version of Beta Software or release by Hexagon of a publicly released commercial version of the Software Product, Customer agrees to return or permanently destroy all earlier Beta Software received from Hexagon. Customer agrees that Customer will return or destroy all unreleased versions of the Beta Software within thirty (30) days of the completion of Beta Testing when such date is earlier than the date for Hexagon's first commercial shipment of the publicly released commercial software.

4 Evaluation Software - Additional Terms. If the Software Product Customer has received with this EULA is provided specifically for evaluation purposes ("Evaluation Software"), then this Article applies until such time that Customer purchases a license of the full retail version of the Software Product. To the extent that any provision in this Article is in conflict with any other term or condition in this EULA, this Article shall supersede such other terms and conditions with respect to the Evaluation Software, but only to the extent necessary to resolve the conflict. Customer may use the Evaluation Software only for evaluation and testing and not for general production use. Customer acknowledges the Evaluation Software may contain limited functionality and/or may function for a limited period of time. Hexagon is licensing the Evaluation Software on an "AS-IS" basis, solely for Customer's evaluation to assist in Customer's purchase decision. If the Evaluation Software is a timeout version, then the program will terminate operation after a designated period of time following installation (the "Time Out Date"). Upon such Time Out Date, the Evaluation Software license will cease operation and Customer will not be able to use the Software Product, unless Customer purchases a license for a full retail version of the Software Product. Customer acknowledges such Evaluation Software shall cease operation upon the Time Out Date and accordingly, access to any files or output created with such Evaluation Software or any product associated with the Evaluation Software is done entirely at Customer's own risk.

5 ECW Browser Plug-in – Additional Terms. The Enhanced Compression Wavelet (ECW) browser plug-in Software Product ("Browser Plug-in") is designed to be used as a browser plug-in to view, within the Microsoft Internet Explorer, Google Chrome and Mozilla Firefox browsers (the "Browsers"), images created using ECW image technology. Browsers are not included with the Browser Plug-in. Customer may make and install as many copies of the Browser Plug-in as Customer needs, as plug-ins to lawfully licensed Browsers on computers that Customer owns or controls. If Customer has a valid license to use Hexagon Enhanced Compression Wavelet (ECWP) server Software Product ("ECWP Server Software"), Customer may also distribute copies of the Browser Plug-in to others whom Customer wish to authorize to access images residing on Customer's ECWP server, provided Customer includes this EULA with the distributed copies. All copies of the Browser Plug-in authorized as described herein are considered to be authorized copies. Customer may install and use the Browser Plug-in only to enable the Browsers to display images that are created with ECW image technology, and that are accessed via Customer's licensed ECWP Server Software. The Browser Plug-in is licensed only for research, commercial, governmental, and educational purposes and is not licensed, and shall not be used, for personal, family, or household purposes.



6      AAIC and RINAV - Limits on use. Customer may not use a single license of AAIC or RINAV for more than four (4) simultaneous jobs. Customers desiring to execute AAIC or RINAV simultaneously on more than four (4) cores may purchase additional licenses.

END OF EXHIBIT B



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### **Exhibit C - Hexagon U.S. Maintenance Terms and Conditions**

The additional terms and conditions set forth in this Exhibit C shall govern the Maintenance Services provided by Hexagon to Customer for the Covered Products identified in individual Orders issued pursuant to the Master Agreement. Terms not defined in this Exhibit C will have the meaning ascribed to them in the General Terms and Conditions or Exhibit B (the End User License Agreement).

#### **1 DEFINITIONS**

1.1 "Maintenance Agreement" means the combined terms and conditions applicable to an Order for Maintenance Services, to-wit: the terms set forth in this Exhibit, the General Terms and Conditions of the Master Agreement, and the applicable Quote for Maintenance Services.

1.2 "Coverage Period" means the period of performance of Maintenance Services set forth in the applicable Quote.

1.3 "Covered Products" means the software listed on the Quote for which Maintenance Services are to be provided to Customer by Hexagon. Covered Products shall also include additional copies of software (i) where the software is already a Covered Product under an existing Maintenance Agreement and (ii) additional licenses are purchased or otherwise obtained by Customer during the Coverage Period. Covered Products may include Software Products and Third Party Software.

#### **2 AUTHORIZATION OF SERVICES**

Following execution of the Master Agreement, Customer authorizes Hexagon to provide the Maintenance Services for Covered Products during the Coverage Period in accordance with the Maintenance Agreement by one of the following means:

- a) returning a signed Quote for Maintenance Services;
- b) submitting a signed purchase order referencing a Quote for Maintenance Services;
- c) paying any charges as set forth on a Quote for Maintenance Services; or
- d) accepting delivery of Maintenance Services as set forth on a Quote for Maintenance Services.

The Maintenance Services will be provided by Hexagon in accordance with the Scope of Coverage as set forth elsewhere in this Exhibit.

#### **3 TERM AND RENEWALS OF A MAINTENANCE AGREEMENT**

3.1 The Maintenance Agreement shall begin, retroactively (if applicable), on the first calendar day of the first month of the applicable Coverage Period, and shall expire at the end of the Coverage Period unless terminated earlier pursuant to the terms of the Master Agreement, or renewed by mutual agreement of the parties in accordance with the terms of this Exhibit. The Coverage Period shall be for whole months only.

3.2 Approximately ninety (90) days prior to the expiration date of any Coverage Period, Hexagon will submit to Customer a renewal Quote that includes pricing for the upcoming Coverage Period. The immediately preceding Article entitled "AUTHORIZATION OF SERVICES" shall apply mutatis mutandis to the formation of a renewed Maintenance Agreement based on the renewal Quote. If the Maintenance Agreement is not renewed for an additional annual Coverage

Period based on the renewal Quote, Hexagon, after the preceding Coverage Period has expired, shall be entitled to discontinue Maintenance Services for the affected Covered Products, including access to system support or knowledge base, and/or end the ability of Customer to log or check support requests.

#### **4 LAPSE AND REINSTATEMENT OF MAINTENANCE SUPPORT COVERAGE**

**4.1 Lapse in Maintenance Coverage.** If a lapse in continuous maintenance Services should occur, then Hexagon may propose additional fees by providing a Quote for Reinstatement of Maintenance Services. Upon Customer's acceptance of said additional fees, reinstatement of maintenance Services will commence. Payment for said Quote will be in accordance with Customer policy upon receipt of an approved invoice. Software reinstatement fees will be applicable only if there is a lapse in maintenance service during the term of this Agreement through no fault of Hexagon. However, Hexagon has no obligation to offer maintenance for certain Third Party Software, including, but not limited to, Microsoft and SAP software, if the maintenance for the Third Part Software has lapsed.

#### **5 SCOPE OF COVERAGE FOR SOFTWARE PRODUCTS**

Maintenance Services described in this Article apply to Software Products only.

Hexagon offers two levels of Maintenance Services for Software Products included in the Covered Products: Standard Support and Premium Support. Under both levels of Maintenance Services, Hexagon shall provide reasonable commercial efforts to aid in the diagnosis and correction of defects in and provide general advice as to the use of the Software Products included in the Covered Products.

Help Desk support is available for the specific Software Products listed on the Quote and functioning on the appropriate Hexagon-supported operating system. However, Patches, modified versions and fixes are only available for the current version and the one version prior to the current version of a particular Software Product; provided however, that if production of the entire system is down and a patch, modified version or fix is the solution required for restoration of production use, patches, modified versions or fixes shall be reasonably provided without regard to version of the Software Product. Services are limited to the specific Software Products listed on the Quote and functioning on the appropriate Intergraph-supported operating system. The level of Maintenance Services will be set forth on the Quote and will include the following:

##### **5.1 Standard Support:** Standard Support will include and be limited to the following:

**5.1.1 Help Desk Support.** Out-of-the-box functionality support via the Help Desk (telephone or eService via Hexagon's Customer Support Web Site where available at <http://esupport.intergraph.com>). Phone support for all priority levels of software errors is available on Monday through Friday from 8 AM – 5 PM at Customer's local time, excluding Hexagon-observed holidays. Local variances in support hours will be posted on the Customer Support Web Site or applicable local support website, or can be determined by contacting Customer's local Hexagon office.

**5.1.2 Updates.** Access to all available Updates of Software Products included in the Covered Products. Hexagon will notify Customer when Updates are made available for any Software Products for which Service has been purchased by way of posting notices of such to the "Support Notices and Announcements" section on the Customer Support Web Site or applicable local support website or via direct notification by Hexagon. If applicable, Customer may also register on the Customer Support Web Site or applicable local support website to automatically receive email notifications when a new release of a



Software Product is made available by Hexagon. Updates are shipped to Customer upon Customer request. Hexagon is not obligated to produce any Updates.

5.1.3 Knowledge Base. Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool.

5.1.4 Errors Classifications.

Customer Support Center Priority Levels, Response Times, and Resolution Targets			
Priority	Problem Description	Response Time	Resolution
Level One	▶ Loss of data	M-F, 7:00AM-7:00PM Central Time – Immediate* or within 30 minutes of notification	▶ 12 hours – Program code correction or a procedural work around
	▶ Data corruption		
	▶ Productive use prohibited		
	▶ No workaround available		
	▶ Aborts		
Level Two	▶ Primary purpose compromised	M-F, 7:00AM-7:00PM Central Time – Immediate* or within one hour of notification during normal business hours	▶ 48 hours – Program code correction or a procedural work around
	▶ Productive use significantly impacted		
	▶ Workaround generally not available		
Level Three	▶ Productive, but incomplete operation	M-F, 7:00AM-7:00PM Central Time – Immediate* or within eight hours of notification during normal business hours	▶ One week – Procedural workaround ▶ Program code correction in a future software release
	▶ Workarounds generally available		
Level Four	▶ Productive, mainly cosmetic in nature	M-F, 7:00AM-7:00PM Central Time – Immediate* or within eight hours of notification during normal business hours	▶ One week – Procedural workaround ▶ Program code correction in a future software release
	▶ Workarounds or configurable options generally available		

5.2 Premium Support: Premium Support will include all of the features available under Standard Support. Additionally, when the software error is considered to be critical (meaning production is down), then phone support is also available after-hours and on Hexagon-observed holidays.

5.3 Hexagon may not provide both levels of support for all Software Products in all countries. Customer may choose any level of Maintenance Services offered, however, all interrelated or identical Software Products included in the Covered Products under the Terms and Conditions must have the same level of Maintenance Services when available.

5.4 Defect correction Maintenance Services are only available for the current version and the one version prior to the current version of a particular Software Product, except in system down cases and in cases wherein Hexagon otherwise elects. Diagnostic Maintenance Services are available regardless of version. Maintenance Services are limited to the specific Software Products listed on the Quote and functioning on the appropriate Hexagon-supported operating system.



## **6 CUSTOMER'S OBLIGATIONS**

Performance of Maintenance Services by Hexagon is specifically conditioned upon the following minimum system requirements and fulfillment by Customer of the following obligations (collectively, minimum system requirements and customer obligations hereinafter referred to as "Customer Obligations"):

6.1 Customer's hardware and operating system software must meet the minimum system requirements specified by Hexagon and made available to Customer upon request.

6.2 Installation. Customer agrees to install all corrections of substantial defects, minor bug fixes and updates, including any Enhancements, for the Software in accordance with the instructions and in order of receipt from Hexagon.

6.3 Facility and Personnel Access. Customer agrees to grant Hexagon unescorted access to Customer's facilities and personnel concerned with the operation of the Software to enable Hexagon to provide Services under this Agreement.

6.4 Error Documentation. Upon detection of any error in the Software, Customer agrees to provide Hexagon a listing of output and any other data, including databases and backup systems that Hexagon reasonably may request in order to reproduce operating conditions similar to those present when the error occurred. Customer reserves the right to redact and expunge sensitive information.

6.5 Customer agrees to notify Hexagon in the event the Customer should purchase additional Hexagon software licenses. In response, Hexagon will incorporate the appropriate maintenance fee into future Quotes, when applicable, to accommodate the additional Software.

6.6. The Customer warrants that for all software licenses supported under this Master Agreement, all like software licenses in the possession of the Customer and located at the Customer's site referenced on this Agreement are listed on the applicable Quote. The Customer also warrants that all prerequisite software licenses necessary to operate the Software supported under this Agreement are listed on the applicable Quote.

6.7 Services provided herein must be utilized only for the quantity of licenses listed on the applicable Quote

6.8 The Customer is responsible for backing up all systems software, applications, and user data files prior to commencement of any repair services.

## **7 EXCLUDED SERVICES**

7.1 Maintenance Services for the following are outside the scope of the Maintenance Agreement and may be available under separate agreement at an additional charge (collectively "Excluded Maintenance Services"):

- Installation of any Covered Product, Update, Upgrade, or interface software
- Network configuration
- Configuration or customization of Covered Products to Customer requirements.
- System-level tuning and optimization and system administration support
- Programming or software development
- Training
- Maintenance Services required because the Authorized Contact is not available or is not trained in accordance with this Exhibit
- On-site Services of any sort

- Maintenance Services outside of the regular business hours associated with the applicable level of Maintenance Services
- Maintenance Services required due to modifications of Covered Products by Customer except where such modifications are required by Hexagon. In the case of Hexagon software modules which assist in the creation and use of Customer software, the performance of Maintenance Services under the Maintenance Agreement is restricted to unmodified components of these Covered Products.
- Maintenance Services required due to use other than in the ordinary manner intended for the Covered Products, or use in a manner that contravenes terms hereunder, or Customer's disregard of the installation and operating instructions according to the documentation provided with the Covered Products
- Maintenance Services required due to failure of software or hardware not supplied by Hexagon and not covered in the Maintenance Agreement.
- Maintenance Services required due to Customer's use of hardware or software that does not meet Hexagon specifications or failure of Customer to maintain or perform industry standard maintenance on Customer's hardware or software
- Maintenance Services required due to software or portions thereof that were incorrectly installed or configured, or use in an environment inconsistent with the support environment specified by Hexagon, or use with peripherals, operational equipment, or accessories not conforming to Hexagon's specifications
- Maintenance Services required due to cases of force majeure, acts of God, lightning strikes, fire, or flood or other events not caused through Hexagon's fault.
- Customer's failure to materially fulfill the Customer Obligations set forth in this Exhibit
- Maintenance Services required due to faulty or incomplete Customer data.

7.2 When ordered by Customer, Excluded Maintenance Services or other software maintenance support services that are outside the scope of the Maintenance Agreement will be billed by Hexagon at the then-current hourly rates and material prices at the time such service is performed.

## 8 SYSTEM SUPPORT TECHNICIAN

8.1 Customer will appoint a minimum of two and a maximum of three contact people who are each authorized to make use of the Maintenance Services ("Authorized Contacts").

8.2 Customer must make sure that the Authorized Contacts have adequate expertise and experience to make possible a targeted and professionally accurate description of malfunctions and make it possible for Hexagon to handle them efficiently. Authorized Contacts must have successfully completed Hexagon product training or complete it at the next available scheduled opportunity, for those products for which formal training is available. Customer will bear the cost of this training. Customer is obligated to select only those personnel for this task who are suitable for it by means of training and function, and who have knowledge of Customer's operating system, network, and hardware and software systems. Customer agrees to promptly notify Hexagon of any replacement of an Authorized Contact.

## 9 REMOTE ACCESS

Customer will permit Hexagon to electronically access Customer's system via SecureLink™. SecureLink™ is a tool for providing secure, auditable remote access to Customer's system in order for Hexagon support personnel ("Customer Support") to effectively troubleshoot critical or complex problems and to expedite resolution of such issues. The Authorized Contacts should be available to assist Hexagon Customer Support as needed during this entire process. Customer Support will only access Customer's system with the knowledge and consent of Customer. For

local variances specific to the use of remote access tools other than SecureLink™, Customer should contact the local Hexagon support office.

## **10 THIRD PARTY SOFTWARE**

10.1 Support and Updates of Third Party Software shall be provided in the fashion and to the extent or duration that Hexagon is authorized to provide such by the third party manufacturer of the Third Party Software, and such Third Party Software Maintenance Services may be subject to additional terms and conditions of the third party manufacturer of the Third Party Software.

10.2 Maintenance Services and Updates for any Third Party Software that are not listed on the Quote must be obtained from the third party owner of the products or their designated representative.

## **11 REQUIRED COVERAGE**

11.1 Multiple or Interdependent Licenses. Customer may not decline Maintenance Services for individual licenses of a Covered Product for which Customer has multiple copies installed at one site or for Covered Products that are being used interdependently regardless of installation locations, except in accordance with the relinquishment process described in Section 12.2, below.

11.2 Prerequisite Licenses. All prerequisite Hexagon software licenses that are necessary to operate the Covered Products for which Customer desires Maintenance Services under the Maintenance Agreement must also be included as Covered Products and Hexagon undertakes to list these on the Quote.

## **12 ADDITIONS AND REMOVALS OF COVERED PRODUCTS**

### **12.1 Additions of Covered Products to Maintenance.**

12.1.1 Additional Software Products from Hexagon. In the event Customer purchases additional licenses of Software Products from Hexagon during the term of this Maintenance Agreement, Hexagon will provide Customer with a written extension Quote that reflects the additional licenses, the effective date of service, and charges for the additional licenses, pursuant to the Master Agreement.

12.1.2 Additional Software Products from a third party. In the event Customer obtains additional licenses of Software Products from an authorized reseller or by any other means, Customer agrees to promptly notify Hexagon in writing about the newly acquired Software Products, and upon receipt of such notice, Hexagon will provide Customer with a written extension Quote that reflects the additional licenses, the effective date on which Hexagon may commence the Maintenance Services with respect to the copies of the Software Product pertaining to the additional licenses, and the charges that would be due in return for these Maintenance Services pursuant to the Maintenance Agreement.

12.1.3 Section 2 shall apply mutatis mutandis to the expansion of the Maintenance Agreement based on the extension Quote(s) submitted to Customer pursuant to the terms of this Article. If the Maintenance Agreement is not expanded based on the extension Quote, then the terms and conditions set forth in this Exhibit regarding reinstatement of Maintenance Services will apply to the additional licenses of Software Products. If, however, the additional Software Products are multiple, interdependent, or prerequisite licenses as described in this Exhibit above, Maintenance Services may not be declined and Maintenance Services and the appropriate monthly charges will begin on the effective date as shown on the extension Quote.

12.1.4 Additional Software Products via Software Transfer Policy. Customer shall purchase Maintenance Services on all additional licenses of Software Products for a site

obtained via software license transfer. Any such software license transfers shall be in accordance with the then-current Hexagon Software Transfer Policy and the EULA or other applicable software license agreement delivered with the Software Product.

12.2 Removal of Covered Products from Maintenance. Either party may provide written notice to the other party at least sixty (60) calendar days prior to the end of any Coverage Period of its intent to remove any individual Covered Products from the Maintenance Agreement for the renewal period. Neither party may remove Covered Products except upon Coverage Period renewal. Customer may not remove individual software licenses of a Covered Product for which Customer has multiple copies under Service at one site or for Covered Products that are being used interdependently at a single site unless Customer has first certified to Hexagon on a Software Relinquishment Agreement (to be provided to Customer by Hexagon upon request) that the copies of the Covered Product for which Customer desires to cease Maintenance Services (the "Relinquished Licenses") for the renewal Coverage Period have been uninstalled and removed from its system(s). Should Customer desire to reinstate Maintenance Services for the Relinquished Licenses at a later date, Customer must re-purchase the licenses at the then current list price.

### 13 PAYMENT

13.1 Terms of Payment. Charges for the Maintenance Services are due and payable annually and in advance. For Customers desiring to pay quarterly and in advance instead of annually and in advance, Customer must request a revised Quote which shall include a convenience fee increase of fifteen percent (15%) of the total annual charges, which convenience fee Customer agrees to pay. The convenience fee shall be prorated and charged to the four quarterly invoices. All charges for Maintenance Services are due net thirty (30) calendar days from the date of invoice or prior to the beginning of the applicable Coverage Period, whichever is earlier. Charges for Maintenance Services associated with Covered Products added during a Coverage Period shall be prorated to the remaining months of the Coverage Period, in whole month increments only, and such charges shall be due and payable in full upon Customer's receipt of invoice.

13.2 Past Due Accounts. HEXAGON RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHOSE ACCOUNT IS PAST DUE. At the discretion of Hexagon, Customers who have not paid any charges when due (i) under this Master Agreement, (ii) under any other agreement between the parties, or (iii) under any agreement between Hexagon and Customer's parent and/or subsidiary at least fifty percent (50%) owned by Customer, may not be rendered Maintenance Services until all past due charges are paid in full. The start of the Coverage Period shall not be postponed due to delayed payment of any charges. If Hexagon is required to use a collection agency or attorney to collect money owed by Customer, Customer agrees to pay the reasonable costs of collection. These collection costs include, but are not limited to, any collection agency's fees, reasonable attorneys' fees, and court costs.

### 14 CUSTOMER WARRANTIES

During the Coverage Period, Customer shall commit to the following:

14.1 Subject to Section 12.2 above, Customer warrants that for all Covered Products supported under the Master Agreement, all licenses of a Covered Product for which Customer has multiple copies in its possession and that are located at the site referenced on the Quote, and all prerequisite licenses necessary to operate Covered Products, are listed on the Quote. If all like Covered Products or prerequisite software licenses are not listed on the Quote, Customer agrees to notify Hexagon so that Hexagon may issue a revised Quote to Customer.

14.2 Customer warrants that Maintenance Services provided herein shall be utilized only for the quantity of Covered Products licenses listed on the Quote.

14.3 Customer shall, and Customer shall cause each of Customer's employees and representatives to, comply with each and every term and condition of the EULA and/or SLA applicable to the Covered Products supported under the Maintenance Agreement.

## 15 RESTRICTIONS

15.1 United States Government Restricted Rights. If a Covered Product (including any Updates, Upgrades, documentation, or technical data related to such Covered Products) is licensed, purchased, subscribed to, or obtained, directly or indirectly, by or on behalf of a unit or agency of the United States Government, then this Article also applies.

15.1.1. For civilian agencies: The Covered Product was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with the Federal Acquisition Regulations ("FAR") 52.227-19 (a) through (d) (Commercial Computer Software – Restricted Rights).

15.1.2. For units of the Department of Defense ("DoD"): The Covered Product was developed at private expense and is "commercial computer software" submitted with restricted rights in accordance with the Defense Federal Acquisition Regulations ("DFARS") DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation).

15.1.3 Notice: The Covered Product is "commercial computer software" as defined in DFARS 252.227-7014 (Rights in Noncommercial Computer Software) and FAR 12.212 (Computer Software), which includes "technical data" as defined in DFARS 252.227-7015 (Technical Data) and FAR 12.211 (Technical Data). All use, modification, reproduction, release, performance, display or disclosure of this "commercial computer software" shall be in strict accordance with the manufacturer's standard commercial license, which is attached to and incorporated into the governing Government contract. Hexagon and any applicable Third Party Software manufacturers are the manufacturers. This Covered Product is unpublished and all rights are reserved under the copyright laws of the United States.

## 16 ADDITIONAL TERMS

16.1 Third Party Providers. Hexagon reserves the right to provide Maintenance Services through a third party provider, subject to Hexagon's assurance of performance, and the provider meeting Customer requirements, as applicable to Hexagon and the requirements of this Exhibit C.

16.2 The use of Updates is subject to all of the terms and conditions of the EULA or SLA provided with Customer's current version of the Covered Products.

16.3 Upgrades require a full installation and may be provided with a separate EULA or SLA. Any EULA or SLA delivered with the Upgrade may supersede any EULA or SLA associated with prior releases of the Covered Products. It is acknowledged and agreed that allowing an Upgrade to be licensed on the same terms as a prior release may create unintended consequences, such as, without limitation, a failure to bind a user to terms necessitated by new functions or content of the Upgrade; and, that mandating an Upgrade be licensed on terms delivered with the Upgrade may create unintended consequences, such as, without limitation, a heightened risk that new terms may apply to the user without the user's normal diligent scrutiny thereof. It is the expectation of the Parties to formally and expressly agree upon license terms to be applied to an Upgrade; provided that in the absence of express license terms evidenced in writing, an Upgrade shall be licensed on the same terms of the prior release, but subject to such superseding terms of the EULA delivered with the Upgrade as a commercially reasonable software vendor would

require in order to accommodate any attributes of the Upgrade which differentiate it from the prior release.)

END OF EXHIBIT C

**EXHIBIT D****HEXAGON**  
SAFETY & INFRASTRUCTURE**PROJECT DELIVERABLE SIGN OFF FORM**

CUSTOMER NAME, ANYWHERE USA – PROJECT NAME

Submission Date:	Month/Day/Year	Sign-Off Target Date:	Month/Day/year
Submitted By:	Hexagon Contact Name	Submitted To:	Customer Contact Name
Customer Contract #:	Customer Contract Number	Customer/Project #:	Hexagon Project Number

**TYPE OF DELIVERABLE**☐ SOW Tasks      ☐ Payments      ☐ Plans/Designs      ☐ Training      ☐ Other**DELIVERABLE INFORMATION**DELIVERABLE DESCRIPTION  
THIS SECTION DESCRIBES THE DELIVERABLE\$AMOUNT OF PYMT  
(If applicable)

With the deliverable described above complete, the Customer shall have ten (10) working days after receipt of a written request from Hexagon, to either sign-off that the deliverable has been met or state in writing to Hexagon the reason the deliverable has not been met.

Sign-off of the deliverable shall be based solely upon the deliverable meeting the requirements stated in the Agreement between Hexagon and CUSTOMER NAME dated Month/Day/Year and shall be indicated by the Customer signing the Project Deliverable Sign-off Form. If the Customer does not provide such sign-off or rejection within the ten working day period then the deliverable will be deemed to have been signed off.

The signature below acknowledges that the deliverable described in the Agreement and listed above meets all of the appropriate criteria and supersedes all prior requirements for this item.

Customer acknowledges completion of this payment milestone according to the Contract Payment Milestone Schedule and provides authorization to invoice this milestone.

**Authorized Customer Representative**  
**Customer Contact Name**\_\_\_\_\_  
**SIGNATURE**\_\_\_\_\_  
**DATE**